

APPEAL TO THE DIRECTOR

Appeal of the Denial of the Applicants'

Request for Reconsideration and

Request for Oral Argument

PRT-04846C and PRT-04205C

CONSERVATION FORCE

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June 27, 2017

Acting Director Greg Sheehan
 U.S. Fish and Wildlife Service
 1849 C Street N.W.
 Washington, D.C. 20240

BY EMAIL AND FEDERAL EXPRESS

RE: Appeal of the Denials of PRT-04846C and PRT-04205C and Request for Oral Argument

Dear Director Sheehan:

We respectfully request reversal of the Division of Management Authority's denials of two trophy import permit applications. The first application, PRT-04846C, requested a permit to import an elephant hunting trophy lawfully taken in the Ngamo/Sikumi Forest Block in Zimbabwe on March 21, 2015. The second, PRT-04205C, requested a permit to import an elephant hunting trophy lawfully taken in the Mbire CAMPFIRE District in Zimbabwe on February 25, 2015. Conservation Force represents both applicants as a pro bono, public legal service. Both hunts generated revenue and conservation incentives to enhance the survival of Zimbabwe's elephant. However, both trophy import applications were denied in February 2017.

On April 6, 2017, we submitted a request for reconsideration of these denials, which was also denied in a letter dated May 16, 2017. This second denial relies on a negative enhancement finding made by the DMA on March 26, 2015 (the "Finding"). We turn to you for a final appeal on behalf of the applicants and the well-managed and beneficial hunting system in Zimbabwe, which has the world's second-largest elephant population.

These applications should be approved. The over-three-year suspension of elephant trophy imports from Zimbabwe should be lifted, for three primary reasons. First, it is based on errors and misinterpretation of facts. The DMA suspended imports without notifying or consulting Zimbabwe. Given the lack of contact with Zimbabwe, it is hardly surprising the three negative enhancement findings made in 2014 and 2015¹ are full of mistakes. When these mistakes were corrected by Zimbabwe's wildlife management authority, Conservation Force, and others, the DMA failed to make the changes, raised new "issues," and complained about not receiving information for which it had never asked. But this feint does not change the fact the reasons given for suspending elephant trophy imports from Zimbabwe did not and do not exist.

Second, the regulatory "enhancement" requirement has been satisfied several times over. The benefits of lawful elephant hunting in Zimbabwe were proven in the thousands of pages submitted to the DMA by

¹ Chief, Branch of Permits, *Enhancement Finding for African Elephants Taken as Sport-Hunted Trophies in Zimbabwe during 2014* (Apr. 17, 2014) ("April Finding"); Chief, Branch of Permits, *Enhancement Finding for African Elephants Taken as Sport-Hunted Trophies in Zimbabwe during 2014* (July 22, 2014) ("July Finding"); Chief, Branch of Permits, *Enhancement Finding for African Elephants Taken as Sport-Hunted Trophies in Zimbabwe on or after January 1, 2015* (Mar. 26, 2015) ("Finding").

the Zimbabwe Parks and Wildlife Management Authority (“ZPWMA”), Conservation Force, tourist hunting operators, and others. This information demonstrates tourist hunting revenues justify habitat protection, fund most elephant management and anti-poaching, and increase community tolerance of elephant and other game. The continued suspension of trophy imports obstructs all this. It blocks resources ZPWMA needs to successfully manage the country’s 83,000+ elephant. The DMA has redefined “enhancement,” and set ZPWMA up to fail the new test by cutting off the support on which ZPWMA relies. This is a “Catch-22” situation.

Third, denial of the applicants’ request for reconsideration is arbitrary, capricious, and contradictory. The Finding’s mistakes should be updated and corrected. The Finding itself requires this—it promises, at least four times, that the DMA will consider additional information when provided and re-evaluate its negative conclusion.² The DMA received such information in July 2015 in response to a May questionnaire sent by the Director of International Affairs almost two months after the Finding was made. Yet, the Finding has not been updated or revised. The denial of the request for reconsideration is wrong. It cannot be based on the best information because the Finding and this denial fail to consider the most up-to-date, complete data requested and received by the DMA.

Therefore, we respectfully appeal the DMA’s errors to you, and request oral argument on the appeal.

I. THE SUSPENSION OF ELEPHANT TROPHY IMPORTS FROM ZIMBABWE IS BASED ON ERRONEOUS INFORMATION AND MISINTERPRETATION OF FACT AND HAS BEEN FROM THE VERY BEGINNING

The suspension has been improper from the start. The DMA’s negative April Finding cited a “lack of recent data on what is occurring in Zimbabwe” as the “most significant aspect of our analysis.”³ But an asserted lack of data does not justify the suspension because it was due entirely to the DMA’s failure to ask. The April Finding admits that prior to the suspension, the DMA had not reached out to ZPWMA in writing since 2007, and ZPWMA provided the requested information at that time. The DMA also met with Zimbabwean representatives “at various times in the past 6 years,” but does not claim to have expressed concern about a lack of data during those meetings.⁴ To our knowledge, there is no record of a 2007 information request, or any other written request until April 4, 2014.⁵

Rather than consulting with Zimbabwe as recommended by CITES Res. Conf. 11.3, or “provid[ing] ... specific actions that can be taken by Zimbabwe ... that might allow the Service to reconsider its findings” and “early engagement with the sport-hunting community to maintain positive relations and create opportunity for

² E.g., *Finding*, p. 1 & 3 (“The suspension on importation of trophies taken during calendar year 2015 or future hunting seasons could be lifted if additional information on the status and management of elephants in Zimbabwe becomes available...”), p. 6, 11 (“the Service can re-evaluate this finding, and the suspension on importation of trophies taken during calendar year 2015 or future hunting seasons could be lifted, if additional information on the status and management of elephants in Zimbabwe becomes available...”).

³ *April Finding*, p. 6.

⁴ *April Finding*, p. 1, 2, 6; *July Finding*, p. 3.

⁵ Conservation Force obtained documents in response to a Freedom of Information Act (“FOIA”) request for the basis of the April 2014 suspension. That production included the April 4, 2014 questionnaire to ZPWMA, but no others.

cooperative action to affect [*sic*] change,” as suggested in an internal memorandum,⁶ the DMA suspended the import of elephant trophies without warning. The DMA’s failure to engage Zimbabwe or the hunting community, and the resultant errors and omissions in the Findings, are so flagrant as to seem intentional. This conduct suggests an unpublished policy against regulated tourist hunting as a conservation tool.

For example, despite identifying a lack of data as the primary basis for suspending imports, the DMA did not request updated information from Zimbabwe until April 4, 2014—the same day it publicly announced the suspension in a press release.⁷ ZPWMA was blindsided and its reaction was immediate. Its Director-General objected in a letter dated April 14 and sent a 32-page response to the questionnaire on April 17, 2014.⁸ The Director-General took the initiative to explain the response, answer questions, and meet with FWS representatives in person in D.C.⁹ (Note that ZPWMA was equally responsive to the FWS’ October 31, 2014 and May 12, 2015 information requests.)¹⁰

But likely due to the failure to consult ZPWMA and reliance instead upon uninformed, biased sources, each negative enhancement finding has contained numerous errors.¹¹ And though the DMA received updated, best-available information and corrections, it has barely adjusted its findings and maintained much of the same language—and the same negative conclusion.

The import suspension was based initially on an inexplicable misunderstanding of Zimbabwe’s elephant population status and poaching level. According to the April Finding, the IUCN African Elephant Specialist Group’s (“AfESG”) database showed Zimbabwe’s elephant population “had been reduced” from 84,416 in 2007 to 47,366 in 2012; ZPWMA failed to properly monitor or manage these elephant; and a “2013 CITES Panel of Experts” identified weaknesses in ZPWMA’s management, funding, and infrastructure. The April Finding also claimed “over 300” elephant were poisoned in Hwange National Park in 2013, and “anecdotal

⁶ CITES Conf. Res. 11.3; Conf. Res. 6.7 (recommending that parties intending to take stricter domestic measures first notify and consult with affected range states); B. Arroyo, *Information Memorandum for the Director* (Jan. 8, 2014), p. 2.

⁷ *FWS FOIA Production*, p. 747-51 (T. Van Norman, Letter to E. Chidziya, Director-General of ZPWMA (Apr. 4, 2014)).

⁸ ZPWMA, *Response to Questions Raised by the U.S. FWS to Address the USA Endangered Species Act* (Apr. 17, 2017) (“*ZPWMA Apr. 2014 Response*”).

⁹ Conservation Force, *Comment Opposing the Negative Enhancement Finding for African Elephant Taken as Sport-Hunted Trophies in Zimbabwe in 2014* (Oct. 16, 2014), p. 5 & attachments (“*CF Oct. 2014 Comment*”).

¹⁰ E.g., Conservation Force, *Request for Reconsideration of Denial of Permit Applications PRT-04846C and PRT-04205C* (Apr. 6, 2017), p. 2-3, 8-10, 13-14 (“*Request for Reconsideration*”) (“ZPWMA responded to the first questionnaire within two weeks ... ZPWMA responded to the second questionnaire in under six weeks; responded to third—not considered in the Finding—in five weeks; responded to the fourth—not considered in the Finding—in two weeks; and responded to the fifth—not considered in the Finding—within several weeks, with the final plan prioritization completed within six months.”); ZPWMA, *Response to the USFWS* (July 2015) (“*ZPWMA July 2015 Response*”); ZPWMA, *Response to the USFWS* (Dec. 10, 2014) (“*ZPWMA Dec. 2014 Response*”).

¹¹ The FOIA production revealed largely dated articles in the record, FWS employees who recommended “unilaterally stop[ping] issuing any permits for any trophies from Zimbabwe immediately,” without consulting ZPWMA, and the immediate refutation of the news reports by WWF. One of the most-cited sources in these articles, Johnny Rodrigues of the Zimbabwe Conservation Task Force (“ZCTF”), was shown to have alleged “twisted” and incorrect information, and was unknown to WWF or the Chair of the National Task Force on Poaching and Habitat Loss. See, e.g., *FWS FOIA Production*, p. 162, 176-78.

evidence” indicated that Zimbabwe’s elephant population was “under siege.”¹² These were all reasons to justify the suspension in the April Finding. And none of these were based in fact. They were factual errors, copied language from the positive, 1997 enhancement finding, or fabrications from anti-hunting sources the FWS knew already to be unreliable.

ZPWMA and Conservation Force submitted extensive information to correct these DMA mistakes. Among other things, we explained how the DMA misinterpreted the AfESG database’s data categories to reflect a “reduction.”¹³ Even the AfESG corrected the DMA’s misunderstanding.¹⁴ We also submitted seven surveys dating from the past ten years, including a 2007 aerial estimate of North West Matabeleland/Hwange to correct the April Finding’s incorrect opinion that ZPWMA did not monitor the elephant population.¹⁵ The surveys covered over three-fourths of Zimbabwe’s estimated elephant range, and were available through a website link to “new” surveys which the DMA apparently did not choose to click.¹⁶

This information provided showed that ~105 elephants were poisoned in Hwange, not 300, largely due to the quick intervention of ZPWMA rangers and the early warning and assistance of the neighboring hunting

¹² *April Finding*, p. 3-6; FWS Division of Public Affairs, *Service Suspends Import of Elephant Trophies from Tanzania and Zimbabwe* (Apr. 4, 2014) (“*Press Release*”) (“Anecdotal evidence, such as the widely publicized poisoning last year of 300 elephants in Hwange National Park, suggests that Zimbabwe’s elephants are also under siege.”).

¹³ As we previously explained, “The enhancement finding badly misunderstands the currentness and completeness of the AfESG’s ‘2013 Africa’ analysis. That data is updated only through a point in 2012 [as stated in the database], and only to the extent the under-funded volunteers of AfESG are able to review and incorporate ‘new’ surveys. The AfESG working group’s pace is not always consistent or speedy due to funding constraints [discussed by the Chair in a document we attached from the Sixty-Fifth Meeting of the CITES Standing Committee]. Accordingly, there are ‘251 new surveys’ advertised on the main page of the Database (which FWS should have visited to get to the ‘2013 Africa’ report). These surveys ‘have not yet been reviewed by the appropriate Data Review Working Group’ [page attached] and are not reflected in the database tables. Had FWS clicked the link ... it would have counted seven from Zimbabwe on the list. Of the seven, five were completed before 2012. (In fact, 221 of the 246 ‘new’ surveys were conducted prior to 2013 and 185 were conducted prior to 2012, making most of the surveys on this list not very ‘new.’) Shouldn’t FWS be sophisticated enough to understand the database’s limitations?” *CF Oct. 2014 Comment*, p. 10-11.

¹⁴ Zimbabwe requested the AfESG comment on the April and July Findings, which was done by email dated May 30, 2014 and a comprehensive letter dated November 3, 2014. The Chair wrote that the July Finding relied on a “serious oversight” in the database—the failure to include the 2007 survey of NW Matabeleland in the country total, although “this survey was listed in the ‘New Surveys’ portion of the AED website (http://www.elephantdatabase.org/population_submissions/154).” The Chair pointed out “four other instances in which the use of data from the AED presented within the finding’s ‘Population Status’ section demonstrated oversights or misinterpretations as well as a fifth instance meriting clarification.” These included: five surveys conducted between 2006-2010 estimated higher populations, contradicting the July Finding’s statement that 2006-2010 surveys indicated “a substantial decline in the population”; even if “double-counting” occurred during the Save Valley Conservancy survey the population would still have increased, contradicting the July Finding’s criticism; the statement about “a carcass ratio of less than 4%” “suggests a conflation of carcass ratios from aerial surveys and mortality rates,” and “4% seems a reasonable figure”; and “sample counts are not inferior to total counts,” contradicting the finding’s suggestion and “betray[ing] a likely misunderstanding of the relative value of sample v. total counts,” among other corrections. *AfESG Letter*, p. 1-4.

¹⁵ Conservation Force, *Comment Opposing the Interim Suspension of Imports of Elephant Trophies from Zimbabwe* (June 6, 2014), p. 4-7 & attachments (“*CF June 2014 Comment*”). We also provided evidence of the monitoring which supplement periodic aerial surveys, including water hole game counts, road strip and walking transects, and ranger-based monitoring. E.g., *ZPWMA Apr. 2014 Response*, p. 6; *CF June 2014 Comment*, p. 4 & attachments; *CF Oct. 2014 Comment*, p. 10-12 & attachments.

¹⁶ *CF Oct. 2014 Comment*, p. 11 & attachments (including website print); *ZPWMA Apr. 2014 Response*, p. 5; *AfESG Letter*, p. 1-2.

operator (an act of enhancement as discussed below). The poachers received deterrent 15-year sentences. In response, ZPWMA initiated a “private sector driven fund raising initiative” and “massive [ranger] recruitment drive” and increased criminal penalties for wildlife poisoning. Moreover, ZPWMA’s data indicated poaching was lower in Zimbabwe than most other African countries. Zimbabwe’s elephant were not “under siege,” but generally stable or increasing.¹⁷

Moreover, the information proved that the “2013 CITES Panel of Experts” did not exist, and certainly did not query ZPWMA’s dedicated elephant management. The 1997 enhancement finding—which approved trophy imports—included almost verbatim language. It seems this language was retained, and somehow edited to “2013,” without any fact-checking by the author.¹⁸ These avoidable, perhaps intentional, errors undercut the April Finding’s negative conclusion. The DMA’s express concerns did not and do not exist.

But instead of admitting its mistakes, the July Finding compounded them. It continued to claim Zimbabwe was suffering from a poaching crisis, lacked updated surveys, and was criticized by a “2002 CITES Panel of Experts.” It relied upon outdated CITES/ETIS reports, incorrectly insisted a historical review of elephant management actions was Zimbabwe’s elephant management plan, ignored four pages of explanation on quota-setting, and ignored a data-rich report from the CAMPFIRE Association. The “updated” July Finding did little more than entrench the prior finding’s errors and omissions.¹⁹

Once again, Conservation Force tried to rectify these mistakes in a 34-page, substantive comment with 58 attachments. The comment painstakingly went through and fact-checked each section of the July Finding and pointed to information that had been ignored.²⁰ We emphasized the on-going update to Zimbabwe’s

¹⁷ ZPWMA Apr. 2014 Response, p. 5-13; CF June 2014 Comment, p. 3-8 & attachments; CF Oct. 2014 Comment, p. 18 & attachments; G. Wittmyer et al., *Illegal Killing for Ivory Drives Global Decline in African Elephants*, Proceedings of the National Academy of Sciences (July 22, 2014). Reduced poaching in Zimbabwe was reflected in the Proportion of Illegally Killed Elephant (“PIKE”) after 2012. In copying-and-pasting from the April Finding, the July Finding incorrectly stated that 2013 PIKE data was unavailable. But it was, as pointed out by the AfESG and Conservation Force. *AfESG Letter*, p. 4; CF Oct. 2014 Comment, p. 21-22 & attachments. Updated 2013 PIKE showed the illegal killing of elephant fell to 0.4 at the Chewore site and 0.22 at the NyamiNyami site, below the “unsustainable” level. CITES Secretariat, SC65 Doc. 42.1 & Inf. 42.1 (data reflected a “statistically significant” decline in poaching); *AfESG Letter*, p. 4-5; see also ZPWMA July 2015 Response, p. 25 (providing PIKE 2000-2014).

ZPWMA’s July 2015 Response (p. 24-31) reports on “Urgent Measures” undertaken to bring about this reduction; see also ZPWMA Dec. 2014 Response, p. 13-14.

¹⁸ CF June 2014 Comment, p. 14; compare *April Finding*, p. 3-4, with Chief, Branch of Permits, Enhancement Finding for African Elephants Taken Sport-Hunted Trophies in Zimbabwe (July 2, 1997), p. 3 (“1997 Finding”).

¹⁹ E.g., *July Finding*, p. 5 (failing to address pledge to update elephant management plan), p. 6 (misinterpreting AfESG database with almost verbatim language to April Finding), p. 6 (dismissing Save Valley Conservancy survey as “partial” and with “double counting”), p. 6-7 (misconstruing carcass ratio in Gonarezhou NP survey), p. 7 (claiming 2012 and 2013 PIKE unavailable), p. 7 (claiming to lack data on ZPWMA’s funding), p. 7 (citing “2002 CITES Panel of Experts”), p. 8 (relying upon ivory seizure reports), p. 9 (complaining to lack offtakes figures), p. 10 (conflating human-elephant conflict with PAC offtake), p. 10 (raising a red herring of the CITES approved trade in hides), p. 10-11 (dictating what factors ZPWMA must consider in quota-setting), p. 11-12 (failing to discuss the CAMPFIRE Association Report).

²⁰ E.g., CF Oct. 2014 Comment, p. 8, 15-16 (explaining how *Elephant Management in Zimbabwe* was not a management plan and quote referred to maintaining trophy quality, not sustainability), p. 10-11 (correcting misinterpretation of AfESG database and existence of “new surveys”), p. 11-12 (noting additional surveys provided which refuted claims that “very few new surveys” had been conducted, Hwange had not been surveyed, and surveys showed downward trend), p. 13 (demonstrating that SVC survey was comparable to prior and “double-counting,” if it even occurred, had minimal effect), p. 13-14 (correcting misreading of GNP survey report and omission of sentence in quote), p. 16-17

elephant management action plan that was largely omitted in the July Finding (although the DMA was kept informed of the process) and the 2014 aerial survey being planned with Zimbabwe's transfrontier partners to be comparable with past surveys, among (many) other things.²¹

However, the Finding still does not adequately consider these corrections and submitted data. As detailed in the Request for Reconsideration, the Finding repeatedly copies-and-pastes from the July Finding. (At least half the substantive paragraphs contain similar, sometimes verbatim language to the July Finding). The Finding fails to incorporate significant information submitted by ZPWMA or Conservation Force. Some of the errors made are fundamental.

For example, as in July, the Finding does not consider four of the seven recent elephant surveys provided, and cherry-picked from the two surveys it cited (and was corrected by the AfESG).²² As in July, the Finding purportedly quotes from a "CITES Panel of Experts" that did not exist.²³ As in July, the Finding dismisses what it labels as "bright spots of conservation" as being "not enough," and criticizes Zimbabwe's lack of a "government mechanism" to encourage conservation. But Zimbabwe was the first African country to give "Appropriate Authority" to local communal land holders to manage and benefit from wildlife on their land. That authority is exactly the mechanism which incentivizes the existence of populations of elephant, lion, leopard, and other dangerous game that otherwise would not exist (see p. 11 below).²⁴ At the turn of the twentieth century, the elephant population in Zimbabwe was estimated to be fewer than 5,000. Now, thanks in part to the "bright spots" of hunter conservation and largely to the devolution of management authority, elephant populations are stable or increasing.²⁵ They are also sustainably hunted, as explained

(explaining why 2014 national survey did not require cameras and comparability was main goal), p. 20-21 (proving "2002" CITES Panel of Experts did not exist), p. 21-22 (providing 2012 and 2013 PIKE data (which had been available in July)), p. 22 (explaining that ETIS data is "confounded" by some CITES-authorized, lawful trade in ivory in Zimbabwe that is subject to seizure abroad), p. 25-26 (justifying quota-setting process), p. 26-28 (noting omission of CAMPFIRE Association Report data), Appendix I (quoting April 4 inquiry and claimed lack of data to demonstrate that data was not requested).

²¹ *CF Oct. 2014 Comment*, p. 9, 16-17, & attachments; *AfESG Letter*, p. 4-5. Please note that the DMA received the report of the national Elephant Management Plan Workshop in December 2014, and was sent invitations, agendas, and proceedings of the regional elephant management planning workshops as these were issued.

²² *AfESG Letter*, p. 2-5 (correcting errors with paragraphs on Save Valley Conservancy and Gonarezhou surveys); *CF Oct. 2014 Comment*, p. 10-14.

²³ The Finding cannot possibly quote the Panel of Experts' report, which was clearly not reviewed, because the author still cannot get the correct date for the Panel after three tries. The author first chose 2013, then cut off a decade in the July Finding. Perhaps he or she considered 1997 to be a safe bet because Zimbabwe's elephant population was down-listed from Appendix I to Appendix II of CITES in 1997. However, that down-listing was in the works for several CoPs, and Zimbabwe's elephant status and management were reviewed by the CITES Panel of Experts in 1992. CITES Res. Conf. 7.9; Zimbabwe, *Consideration of Proposals for Amendment of Appendices I and II* (Prop. 10.27); CITES Panel of Experts, *Review of the Proposals Submitted by Botswana, Namibia, and Zimbabwe to Transfer Their National Populations of *Loxodonta africana** (1992). Please note that even if the Finding intends to cite this Panel, their report is twenty-five years old.

²⁴ *CF Oct. 2014 Comment*, p. 27-30; *Request for Reconsideration*, p. 16-18. The Finding (p. 10) criticizes ZPWMA due to the commitment of hunting operators to provide enhancement. That should not be a criticism. It is a benefit to the elephant and other species. It represents the devolution of anti-poaching and community support obligations to the private sector, relieving some of the financial burden on ZPWMA. *Accord ZPWMA Apr. 2014 Response*, p. 14-16, 27-28; *ZPWMA Dec. 2014 Response*, p. 4, 17-20, 25-26; *ZPWMA July 2015 Response*, p. 14, 31-33.

²⁵ ZPWMA, *Zimbabwe National Elephant Management Plan (2015-2020)*, p. 3-11 ("Plan").

in three ZPWMA Responses and the non-detriment determination.²⁶ The participatory, locally allocated quotas represent a fraction (0.37% in 2014 and 0.49% in 2016) of the elephant population, and offtakes are even lower—0.23% on average (2010-2015).²⁷

Rather than accepting the evidence of enhancement and sustainability, the Finding, as in July, twists facts, ignores relevant data, claims not to have information, and does everything it can to justify the negative conclusion in light of everything that points to a positive finding of enhancement. The DMA then tacitly admitted it had not requested information it claimed not to have when it sent a May 2015 questionnaire to ZPWMA.²⁸

The concerns on which the trophy import suspension was based have been proven baseless. Zimbabwe's elephant management and tourist hunting system have been proven to benefit the species. If all of the submissions by ZPWMA, Conservation Force, and others are reviewed without a preconceived conclusion, then that best-available and most current information requires the suspension to be lifted. An unbiased and open-minded review is what we request by this appeal.

II. THE SUSPENSION OBSTRUCTS THE ENHANCEMENT GENERATED BY LAWFUL TOURIST HUNTING

During the last 38 months and counting, ZPWMA, Conservation Force, and others have provided far more than enough information to demonstrate that the “enhancement” standard is satisfied. Far more than in prior enhancement findings. This information reflects “activities that provide a direct or indirect benefit to the species in the wild.”²⁹ Tourist hunting benefits elephant by creating incentives for habitat protection and expansion, operating funding for ZPWMA, funding for anti-poaching and “boots on the ground,” rural community employment and investment, and much more. This is not an empty claim. It is borne out in the extensive documentation submitted.

A. Expansion and Protection of Habitat and Sustainable Funding

Tourist hunting enhances the survival of elephants in Zimbabwe by justifying protection of two-and-a-half times more habitat than in strictly-protected national parks. Although the ~28,000 km² in national parks contribute greatly to wildlife conservation, the parks are much smaller than the approximately 19,000 km² in safari areas, 40,000 km² in communal/CAMPFIRE areas, and over 7,100 km² in private conservancies.³⁰

²⁶ ZPWMA Apr. 2014 Response, p. 19-26; ZPWMA Dec. 2014 Response, p. 22-25; ZPWMA July 2015 Response, p. 43-48; ZPWMA, *Non-Detriment Finding for African Elephant in Zimbabwe* (May 16, 2014); *Request for Reconsideration*, p. 10-11.

²⁷ ZPWMA July 2015 Response, p. 43 (average offtake of <192 elephant per year), 44 (quota less than 300 in 2014), 46 (2016 quota).

²⁸ B. Arroyo, *Letter to Minister Kasukuwere* (May 12, 2015); .

²⁹ C. Hoover, *Letter to Applicant PRT-04846C* (May 16, 2017), p. 1 ¶ 2.

³⁰ IUCN, World Database on Protected Areas, publicly available at <http://www.protectedplanet.net>; CAMPFIRE Assn., *Trophy Imports Suspension and the CAMPFIRE Program* (2014), p. 1-2 (“CAMPFIRE Association Report”); *Request for Reconsideration*, p. 17 (citing B. du Preez et al., *Sport-Hunting and Lion (Panthera leo) Conservation in Zimbabwe* (Jan. 31, 2016); B. du Preez, *Bubye Valley Conservancy Lion Research Report* (Jan. 12, 2016) (“BVC Report”); R. Groom, *Hunting in Zimbabwe’s Save Valley Conservancy* (Jan. 27, 2013).

Note, this estimate does not include all communal areas, but only nine significant hunting areas. It does not include all conservancies (most specifically, the 1,400 km² Nuanetsi area or the Gwayi Valley). And it does not include the

The revenue from lawful hunting sustains this expanded habitat. It is obviously an incentive in safari areas, but also in CAMPFIRE areas (prior to the suspension), hunting generated ~90% of all revenue, and elephant hunting generated three-quarters of this total.³¹ In private conservancies such as Bubyé and Savé Valley, operations, anti-poaching, and community programs are exclusively supported by hunting income.³²

Hunting revenue also provides most of the operating budget on which ZPWMA relies to secure this habitat and police the national parks.³³ Conservation fees charged to hunting clients and others, and hunting fees charged for concession leases, licenses, and trophies, are the primary source of ZPWMA's funds. Elephant hunting fees account for the largest percent of revenue generated across all user-pay land categories (e.g., safari areas, communal land, private conservancies, and forestry concessions). In 2014, over \$6 million in trophy fee revenue derived from elephant hunts. Approximately \$5 million accrued to ZPWMA and was "ploughed back into conservation," law enforcement, and management.³⁴ Over 50% of the revenue had come from U.S. hunters prior to the suspension.³⁵

According to ZPWMA's Elephant Coordinator: "the African elephant is one of the biggest drawcard species from a hunting perspective and is at the centre of all the major hunts ... Generally hunting contributed an average of USD22m to the GDP in 2014 and 2015..."³⁶ Most of the revenue from elephant hunting is re-invested in and contributes to the recovery of the species by being used for law enforcement and anti-poaching.³⁷ Without this revenue, ZPWMA is hard-pressed to implement its state-of-the-art national and regional elephant management plans. The trophy import suspension reduced, and continues to reduce, this much-needed revenue.³⁸

forest reserves that allow sustainable hunting, such as those in the Matetsi/Kazuma Pan area. The habitat provided and protected in hunting areas is even larger than stated above.

³¹ *CAMPFIRE Association Report*, p. 4; CAMPFIRE Assn., *CAMPFIRE Hunting Income and Distribution* (Dec. 1, 2015), p. 6 ("*CAMPFIRE Income Analysis*").

³² Conservation Imperative, *Fate of the African Lion: Bubyé Valley Conservancy* (sent to the DMA on Feb. 24, 2016).

³³ *ZPWMA Apr. 2014 Response*, p. 16, 25, 27; *ZPWMA Dec. 2014 Response*, p. 20-21; *ZPWMA July 2015 Response*, p. 48-53 & attachments; ZPWMA Email to DMA forwarding *Zimbabwe National Elephant Supplementary Management Plan (2015-2010)* (Nov. 9, 2016) ("*Plan Supplement*"); *CF Oct. 2014 Comment*, p. 30-31 & attachments.

³⁴ *ZPWMA Apr. 2014 Response*, p. 25; *CF June 2014 Comment*, p. 17 (CAMPFIRE revenue is also "ploughed back into wildlife conservation activities in CAMPFIRE areas. Proceeds are used directly for elephant conservation, provision of game water supplies, wildlife monitoring and anti-poaching programs on communal land").

³⁵ *ZPWMA July 2015 Response*, p. 40-41; *CAMPFIRE Association Report*, p. 4; *CAMPFIRE Income Analysis*, p. 6; ZPWMA, *Legal Trade, Conservation, and Rural Livelihoods: A Zimbabwean Perspective* (Dec. 2016), p. 19; SOAZ, *Status of Elephant Populations, Hunting, and Anti-Poaching Effort in Safari Areas in Zimbabwe* (2014), p. 3-4 ("*SOAZ Report*").

³⁶ ZPWMA, *Legal Trade, Conservation, and Rural Livelihoods* (Dec. 2016), p. 9-10.

³⁷ *ZPWMA July 2015 Response*, p. 36-41, 48-51; ZPWMA, *Legal Trade, Conservation, and Rural Livelihoods* (Dec. 2016), p. 9-10. Salaries and ranger equipment are the largest budget items, and most rangers are used for patrols that conduct monitoring and protection/enforcement. *ZPWMA July 2015 Response*, p. 34-36.

³⁸ See generally *Plan*; *Plan Supplement*, p. 6 ("One of the major challenges regarding implementation of the EMP is with regards to the adoption of stricter domestic measures by the United States of America. This has had the net effect of further reducing the revenue from hunting into the Authority, which therefore affects the budget allocated to resource protection, in particular the elephant in this case. One of the key impediments towards and full and comprehensive implementation of the Elephant Management Plan is limited resources."); CAMPFIRE Assn., *The Role of Trophy Hunting of Elephant in Support of the Zimbabwe CAMPFIRE Program* (Dec. 2016), p. 1, 22-25 ("*CAMPFIRE—Role of Hunting Report*"), publicly available at <http://campfirezimbabwe.org/index.php/downloads>.

B. Anti-Poaching and Encroachment

Lawful tourist safari hunting enhances the survival of elephant by being a key component of Zimbabwe's national anti-poaching strategy.³⁹ Hunting operators are often the first to observe poaching and the first line of defense against poachers because concessions frequently buffer national parks and international borders. The DMA was provided extensive documentation to evidence this enhancement, yet somehow misinterprets this evidence as a negative.

The Hwange National Park poisoning referenced in the April Finding and press release was first discovered by a hunting company's team of anti-poaching scouts. The scouts initially tracked the poachers, and the operator and team worked closely with ZPWMA rangers to minimize the damage.⁴⁰ This is a clear example of how hunting operators in the field⁴¹ benefit elephant. Their presence adds to the capacity to police a park like Hwange, 1.6 times the size of Yellowstone National Park. Hunting operators' anti-poaching teams add a significant number of "boots on the ground." According to SOAZ, a sample of just fourteen operators invested almost \$1 million in anti-poaching in 2013, including salaries for 245 scouts.⁴² (The DMA received this data, but has never discussed or cited it in the Findings.)

Conservation Force submitted specific examples to further demonstrate the operators' commitments and contributions. One operator in an area bordering Mozambique "picked up over 5,000 snares and arrested over 60 poachers (in four years)," with an annual anti-poaching expenditure of \$80,000 to \$90,000. The scouts have grown so skilled in anti-poaching that they work with ZPWMA rangers to patrol Mana Pools National Park, in addition to patrolling the concession. The operator spent over \$95,000 on anti-poaching activities in 2016 alone, and more in community payments (as discussed in the next section).⁴³

Similarly, a hunting operator discovered the Hwange poisoning because the company's twelve-person anti-poaching team patrols the park's edge. This is an inherent benefit of tourist hunting. The company's anti-poaching and community programs exceeded \$350,000 in 2014. Ninety-five percent of the company's revenue derived from elephant hunting prior to the trophy import suspension.⁴⁴

³⁹ ZPWMA Apr. 2014 Response, p. 26-28; ZPWMA Dec. 2014 Response, p. 17; ZPWMA July 2015 Response, p. 27, 33-34.

⁴⁰ CF June 2014 Comment, p. 4, 18-19 (attaching email and declaration from operator involved).

⁴¹ The Finding, p. 10, misconstrues this as hunting clients ("armed hunters"). But our submissions have never claimed hunting **clients** contribute to anti-poaching. Rather, the extensive operator patrols protect the habitat and provide the key enhancement. E.g., CF June 2014 Comment, p. 4, 17-19 & attachments; CF Oct. 2014 Comment, p. 22, 27-33 & attachments; Request for Reconsideration, p. 12-13, 16-18 & attachments (e.g., examples of Charlton McCallum Safaris, Lodzi Hunters, Pro Safaris, Martin Pieters Safaris, etc.); SOAZ Report, p. 4.

⁴² SOAZ Report, p. 4.

⁴³ Information for Charlton McCallum Safaris submitted in: CF June 2014 Comment, p. 16,18-19 & attachments; CF Oct. 2014 Comment, p. 27-30 & attachments; Conservation Force, Supplementary Comment Opposing [July] Finding and Information Provided in Support of a Positive Enhancement Finding for 2015 (Dec. 15, 2014) p. 3-6 & attachments ("CF Dec. 2014 Comment"); CF, Supporting Documentation for Comments Demonstrating Enhancement from Tourist Hunting in Zimbabwe (Jan. 19, 2015), p. 1-4 & attachments ("CF Jan. 2015 Comment"); Request for Reconsideration, p. 12 (citing emails sent to the DMA attaching Charlton McCallum Safaris documents).

⁴⁴ Information for Lodzi Hunters: CF Dec. 2014 Comment, p. 3-6 & attachments; CF Jan. 2015 Comment, p. 1-4 & attachments; Request for Reconsideration, p. 13 & attachments.

Another hunting operator along the Zambian border invests over six percent of turnover in a ten-member anti-poaching team, and coordinates with ZPWMA rangers to police the over 500 km² concession (a little smaller than Zion National Park).⁴⁵ In 2013-2014, anti-poaching teams in the Omay communal area (which forms a corridor with several safari areas and national parks) conducted 289 patrols, recovered 165 snares, and arrested 123 poachers.⁴⁶

The revenue from tourist hunting, and especially elephant hunting, underwrites anti-poaching programs throughout Zimbabwe. In the national parks, hunting operators work with and support ZPWMA rangers.⁴⁷ Their contributions do not “raise ... concerns about the effectiveness of funds utilization” by ZPWMA,⁴⁸ but benefit the elephant and other wildlife by sharing law enforcement costs with the private sector, reducing the government burden. This is a customary and widely-recognized “enhancement” of regulated hunting in Zimbabwe and throughout Southern and Eastern Africa. As we previously explained:

The examples ... are not just “bright spots,” as dismissed in the [July] finding ... they form a steady beam of light that shines on Zimbabwe’s elephant. These examples represent a consistent commitment throughout the safari community in Zimbabwe, and a shared goal of ensuring the conservation of elephant and other wildlife. That is ... enhancement.⁴⁹

And that enhancement is being reduced and threatened by the denial of these import permits.

C. CAMPFIRE/Reduction of Human-Elephant Conflicts

Zimbabwe was the first African country to devolve control over natural resources to the local communities living on that land. CAMPFIRE’s innovation was to give communities a proprietary interest in the resource, including wildlife.⁵⁰ CAMPFIRE communities rely upon lawful tourist hunting to generate revenues, which are used for building schools and clinics, improving water supplies, paying school fees or pensions, shoring up food supplies, and more.⁵¹ Benefits for rural communities are multiplied in jobs, gratuities, game meat, and other financial opportunities much valued in a country with high unemployment and poverty rates.⁵²

Before the suspension of elephant trophy imports, approximately 90% of CAMPFIRE revenue derived from hunting concessions. The revenue is split among wards, rural district councils, and the national CAMPFIRE Association, with 55% of funds directed to ward bank accounts, and 26% of funds invested in community projects.⁵³ Elephant hunting was the financial backbone of CAMPFIRE. Over 70% of the revenue derived

⁴⁵ *Request for Reconsideration*, p. 17 & attachments (Pro Safaris Report).

⁴⁶ *Request for Reconsideration*, p. 17 & attachments (Martin Pieters Safaris Reports).

⁴⁷ *CF June 2014 Comment*, p. 4, 18; *CF Oct. 2014 Comment*, p. 22, 28-30.

⁴⁸ *Finding*, p. 10.

⁴⁹ *CF Oct. 2014 Comment*, p. 33 (citing *CF June 2014 Comment*, p. 17-19).

⁵⁰ *CAMPFIRE—Role of Hunting Report*, p. 2-3.

⁵¹ From 1986-2006, CAMPFIRE channeled more than \$20 million to rural villages and \$17 million to RDCs. *CAMPFIRE Association Report*, p. 3-4, 8.

⁵² *CAMPFIRE Association Report*, p. 3-4, 7-11; *CAMPFIRE—Role of Hunting*, Annex 1; *ZPWMA Apr. 2014 Response*, 24-28 *CF June 2014 Comment*, p. 15-17 & attachments; *CF Oct. 2014 Comment*, p. 26-27, 30-33.

⁵³ Relying on outdated information, the July Finding (p. 11) and Finding (p. 18) each criticize distribution of CAMPFIRE revenues, but generally that has not been an issue in the last decade, since the CAMPFIRE Constitution and revenue-sharing guidelines were revised. It is “NOT about noncompliance in disbursement of revenue to communities. It is the quality of services provided by RDCs to communities, e.g. anti-poaching, problem animal control, hunting

from elephant hunting. This exceeded \$1.7 million in 2012.⁵⁴ Over 53-66% of clients were U.S. citizens, and from 2010-2015, over \$5 million was generated for CAMPFIRE communities from elephant hunts by U.S. hunters.⁵⁵ However, that number has fallen since 2014.⁵⁶

The grant of Appropriate Authority means ZPWMA foregoes the hunting fees in CAMPFIRE areas. Fees and other benefits accrue directly to the communities. CAMPFIRE communities also benefit from contracts or joint ventures with hunting operators. Conservation Force submitted specific examples of community-operator arrangements which have reduced poaching and human-wildlife conflicts. In the Mbire District where applicant PRT-04205C hunted, the operator and community maintain a “genuine joint venture.” In 2013 to 2015, the operator paid over \$1 million to local wards.⁵⁷ Ninety percent of this income came from hunting, 90% of clients were U.S. citizens, and over one-third of the revenue derived from elephant hunts by U.S. citizens.⁵⁸

Likewise, under contract with the Tsholotsho district council, one operator has paid over \$530,000 to the community in the same period. Over \$318,000 was deposited in ward bank accounts. The operator assists with village projects on top of these payments.⁵⁹

These are two of the many examples of livelihood improvements related to tourist hunting, with reduced encroachment and conflict as the intended results. The continued suspension of elephant trophy imports, however, obstructs the benefits generated for local communities and reverses the tolerance gains.⁶⁰ The CAMPFIRE Association wrote four reports that have been submitted to the DMA, including the CAMPFIRE Workshop report, to raise the alarm about the suspension’s detrimental impact. Yet CAMPFIRE’s concerns and supporting statistics have not been credited or even discussed in the Findings.

The positive, 1997 enhancement finding cited CAMPFIRE as the means Zimbabwe used to mitigate human-elephant conflict.⁶¹ In the past, the FWS consistently supported CAMPFIRE. CAMPFIRE was considered “an excellent example of a social program built on values obtained from the sustainable utilization of wildlife resources” and “an important political-economic-sociological institution that developed an environmental ethic, restored the perception of wildlife as a valuable resource, advocated wildlife management ... and encouraged the conservation of natural ecosystems and wildlife habitats on tribal lands.”⁶²

administration, that often creates tension.” *CF Oct. 2014 Comment*, p. 31-32 (quoting C. Jonga (Sept. 30, 2014)). The Finding quotes a portion of this email, but still reaches the opposite conclusion.

⁵⁴ *CAMPFIRE Association Report*, p. 4; *CAMPFIRE Income Analysis*.

⁵⁵ From 2010 to 2015, hunting fees accounted for over \$11 million, 70% from elephant hunting and 66% from U.S. hunters. *CAMPFIRE Association Report*, p. 3-4, 8; *CAMPFIRE Income Analysis*, p. 1, 6; *CAMPFIRE—Role of Hunting*, p. 9-11.

⁵⁶ *CAMPFIRE—Role of Hunting Report*, p. 22-23.

⁵⁷ *Request for Reconsideration*, p. 15 (citing Chief Sen. D. Chisunga, *Land Use Planning at the Local Level*, Presentation at the 14th African Wildlife Consultative Forum (Nov. 10, 2015)); *CF Oct. 2014 Comment*, p. 29 & attachments.

⁵⁸ Please see note 43.

⁵⁹ Please see note 45.

⁶⁰ *CAMPFIRE—Role of Hunting Report*, p. ii.

⁶¹ *1997 Finding*, p. 2.

⁶² 57 FR 35473-01, 35480, 35484 (Aug. 10, 1992), 1992 WL 188531(F.R).

In Zimbabwe, CAMPFIRE remains the primary way rural communities benefit from the sustainable use of wildlife. The DMA's failure to consider CAMPFIRE's enhancement or damage caused by the suspension is irresponsible and detrimental to the elephant.⁶³ CAMPFIRE's concerns, and the suspension's impact, have recently been corroborated by an independent paper concluding that tourist hunting is important to both wildlife conservation and rural development in Zimbabwe.⁶⁴

D. Summary of Proven Enhancement

These direct and indirect benefits have been documented.⁶⁵ Every hectare of habitat secured, every dollar generated for management and enforcement, every snare picked up, every elephant spared based on the value of a hunting fee **is enhancement**. This satisfies the "special rule" self-imposed by the FWS.⁶⁶

Unfortunately, the DMA has chosen to obstruct this enhancement. It admits "some benefits are shown." But it has repeatedly raised the bar. Instead of requiring hunting enhance the survival of the species, the DMA apparently requires the hunting "ensure" or "guarantee" the species' survival. But neither the ESA nor the special rule uses those words. Nor does the ESA or special rule mention detailed financial breakdowns, changes to a country's accounting, tracking of every dollar spent by a U.S. citizen, or a completely flawless system. The DMA has invented a standard far higher than enhancement, perhaps to legitimize its original mistake in suspending imports of lawful elephant trophies and justify continued suspension. These decisions have seemed to be pre-made and based on a political imperative, not the reality of elephant in Zimbabwe or the ESA's legal requirements.

III. DENIAL OF THE REQUEST FOR RECONSIDERATION IS BASELESS AND CONTRADICTIONARY

Denial of the request for reconsideration is error. Like the enhancement Findings, the DMA's denial letter is based on misconceptions. The letter claims, "[at] the time you originally applied for a permit, the Service had reviewed the best available scientific and management data..."⁶⁷ But that is impossible. The Finding dates to 2015. These applications were filed in 2016. (Until then, no permit application was even required for CITES Appendix II-listed, ESA-threatened-listed elephant imports.⁶⁸) Within its first three paragraphs, the denial misrepresents the facts.

Moreover, the best-available information for 2015 was not considered in the Finding, which copies-and-pastes most of the July Finding and fails to engage with most of the data submitted by Conservation Force. How can a finding purport to rely upon the best-available and most up-to-date information, when so much is repeated and so little new and additional information is incorporated?⁶⁹ Moreover, the DMA was aware that it had not asked for all the information it claimed not to have, as shown in the May 12, 2015 request

⁶³ *CAMPFIRE—Role of Hunting Report*, p. ii, 22-25.

⁶⁴ V.K. Muposhi et al., *Trophy Hunting, Conservation, and Rural Development in Zimbabwe: Issues, Options, and Implications*, International Journal of Biodiversity (2016), publicly available at <https://www.hindawi.com/journals/ijbd/2016/8763980/>.

⁶⁵ Please see the Index to the Request for Reconsideration.

⁶⁶ 50 C.F.R. § 17.40(e)(6)(B).

⁶⁷ C. Hoover, *Letter to Applicant PRT-04846C* (May 16, 2017), p. 1 ¶ 3.

⁶⁸ 50 C.F.R. § 17.40(e), revised by 81 Fed. Reg. 36388 (June 6, 2016).

⁶⁹ See generally *Request for Reconsideration*.

for information sent to ZPWMA.⁷⁰ ZPWMA's July 2015 Response has not been discussed in any finding or otherwise considered, even though it provides information relevant to 2015 and before, and fills in alleged information gaps. Denial of the request for reconsideration is improper because the Finding should have been updated, in keeping with its own terms, to consider this 2015 response.⁷¹

Last, although the denial draws a line at March 26, 2015, there is no magic date by which a finding must be made. We have DMA enhancement findings dated in March, April, July, October, and December, and there are undoubtedly findings made in other months for other species.⁷² It is arbitrary, capricious, and unfair to stand on a March finding when the DMA knew Zimbabwe was updating its elephant management plan and taking other steps to satisfy the DMA's own critiques and to cut off Zimbabwe's year-long hunting season after three months.⁷³ This line need not be drawn, and should be reversed.

CONCLUSION

More than sufficient information has been provided to override the anecdotal information cited as grounds to support the April 2014 suspension of elephant trophy imports. Enhancement has been shown, and the DMA's mistakes in the April, July, and March findings have been corrected in the submissions by ZPWMA, Conservation Force, and others. However, the DMA has not considered a great deal of that information submitted, to the detriment of the elephant, CAMPFIRE communities, and well-managed tourist hunting system in Zimbabwe.

Reversal of the over-long suspension is urgently due. In constantly re-defining "enhancement," the DMA has blocked the very benefits it purports to require for elephant and other species. Zimbabwe's elephant management strategy largely depends upon the revenues and incentives that come from a limited hunting offtake and trade. We remain concerned that little reason remains for Zimbabwe to maintain such a large and costly elephant population, when the incentive of U.S. hunters has been blocked by the U.S. FWS. The continued suspension of elephant trophy imports is itself the greatest threat to Zimbabwe's elephant.

The best-available information demonstrates that the suspension was a mistake from inception based on anecdote and misinformation. The best-available information demonstrates that lawful hunting fulfills its promise in Zimbabwe—it secures the most habitat, pays for management and anti-poaching, and improves human tolerance of elephant and other dangerous game. Because the enhancement standard is met, the continued suspension of elephant trophy imports is arbitrary, capricious, and unlawful.

Last, the best-available information demonstrates that denial of applicants' request for reconsideration was also in error. The March 25, 2016 enhancement finding is not updated. Its arbitrary time frame should be rejected. When the best-available information is properly considered, the import of elephant hunting trophies from 2015 and beyond should be approved. When the dependent conservation program of the elephant is considered, the permits should be approved.

⁷⁰ B. Arroyo, *Letter to Minister Kasukuwere* (May 12, 2015); *ZPWMA July 2015 Response*.

⁷¹ E.g., *March Finding*, p. 1, 3, 6, 11.

⁷² The DMA made a positive enhancement finding for the import of sport-hunted elephant trophies from Zambia in December 2012, and a positive enhancement finding for the import of wild and wild-managed lion hunting trophies from South Africa in October 2016.

⁷³ The DMA apparently has not denied import permit applications for hunts occurring later in 2015, as we are aware of an applicant who hunted an elephant in Zimbabwe on May 5, 2015 who has not received a denial letter.

Accordingly, we respectfully request that you reverse the denial of these permit applications and order the DMA to issue these permits.

On behalf of the applicants, we respectfully request oral argument on this appeal. We ask that you provide a contact for scheduling or contact our office to schedule this argument.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John J. Jackson III" and "Regina A. Lennox".

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Attachments:

- Chart of Key Documents and Quotations
- Copy of Request for Reconsideration and Index of Attachments
- Copy of letter denying Request for Reconsideration
- March 25, 2016 negative Enhancement Finding