

# CITES & U.S. Regulation of Hunting Trophy Imports

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# What is CITES?

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- The Convention on International Trade in Endangered Species of Wild Fauna and Flora
- 184 Parties – includes 183 countries and 1 REIO
- Conference of the Parties – every 2-3 years
- Committee meetings between CoPs
  - Standing
  - Animals
  - Plants

# How It Works

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- Species Listings:
  - Appendix I – threatened with extinction, affected by trade (endangered).
  - Appendix II – may become threatened with extinction if trade not regulated (threatened).
  - Appendix III – individual country listing; to prevent or restrict exploitation.
- Resolutions:
  - Used to address problems with implementation and increase effectiveness.
  - Often provide guidance on Convention provisions or special circumstances.
- Decisions:
  - Usually direct Committees or Secretariat to do something.
  - Short term in nature; usually one CoP cycle.

# Role of Observers

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- Only Parties can vote.
- Observers are anyone else who attends the meetings.
- Observers can:
  - Participate in Working Groups
  - Lobby Parties
  - Provide technical expertise / conduct studies
  - Give interventions on issues of interest
  - Provide financial assistance

# Trade of Listed Species

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- Listing a species does not automatically prohibit trade.
- Appendix II (like threatened):
  - Requires country of export to issue non-detriment finding / export permit
  - Non-Detriment Findings – Resolution Conf. 16.7
- Appendix I (like endangered):
  - Requires countries of import and export to issue NDFs / permits
- Stricter Domestic Measures imposed by Parties (more restrictive than CITES requirements).

# Hunting Trophies

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“Hunting Trophy”—a “Purpose Code”—is a defined term – Res. Conf. 12.3

## Hunting-Related Resolutions:

- Res. Conf. 2.11 – Trade in hunting trophies of species listed in App. I
- Res. Conf. 10.10 – Trade in elephant specimens
- Res. Conf. 10.14 – Quotas for leopard hunting trophies and skins for personal use
- Res. Conf. 10.15 – Establishment of quotas for markhor hunting trophies
- Res. Conf. 13.5 – Establishment of export quotas for black rhinoceros hunting trophies
- Res. Conf. 17.9 – Trade in hunting trophies of species listed in App. I or II

# CITES Elephant Wars

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- Long & complicated history with CITES primarily due to concerns re poaching and ivory trafficking
- Currently split-listed: RSA, Namibia, Botswana, Zimbabwe on App. II
- Resolution adopted for listing determinations; “Panel of Experts” (revoked)
- MIKE/PIKE; National Ivory Action Plans
- Attempts to uplist/downlist at CoP17, 18, and 19 (all rejected)
- Recent efforts re demand reduction, ivory stockpile security, trade in live elephants, etc.
- Nomenclature now under review – likely split into savannah and forest elephants



# Range State Regulation of Safari Hunting

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# Range State Regulation

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- The legal regime that governs hunting in Africa and subsequent import into the U.S. starts with the range (exporting) country.
- The range country will typically set hunting and export quotas for the key species that generate the most hunting revenues, such as elephant, lion, leopard, etc.
- These quotas are set at the national level taking into account international regulations, CITES resolutions, the status of the species under national laws, management plans and policies for the species, abundance, other types of offtake (both legal and illegal), and other factors.

# Range State Regulation

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- Must comply with CITES; the range state will only issue export permits after making an NDF.
- The range state will typically make a written finding or will announce the NDF through an export quota published on the CITES website.
- The offtake and export quotas are typically informed with information from local stakeholders, such as hunting operators, local communities, and private landholders.

# Range State Regulation

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- The quotas are then allocated locally.
  - Individual hunting areas (frequently called “concessions”) are allocated their own, limited offtake quotas for each species.
  - For example, a 2,000 km<sup>2</sup> concession may receive two elephant, one lion, and three leopard on quota.
- Allocated quotas may be higher or lower depending on species abundance, management goals, or expected hunter success.

# Range State Regulation

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Allocated quotas may differ depending on the land type.

- **State-owned** land is typically leased by a hunting operator; these areas often border / buffer national parks and have relatively low quotas commensurate with the size of the area.
- **Community held** land is multi-use; rural people will live, farm, and graze on the land but also zone some land as wildlife habitat and lease that land to a hunting operator.
- **Private land** (also called “ranches” or “game farms”) is most common in South Africa and Namibia.

# Range State Regulation

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- Use of an allocated quota is heavily monitored.
  - An operator must typically apply for a license for a hunting client to use the allocated quota.
  - The operator must report back after the hunt takes place—whether the permit is used or not.
- For some species, a government ranger must accompany the hunting party (the hunter pays for this direct government oversight).
- Failure to comply with the regulations may result in monetary sanctions for the hunting operator, a zero-quota allocation in the succeeding year, suspension of the operator's license, or other sanctions.



# U.S. Federal Regulation of Safari Hunting

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# U.S. Federal Regulation

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- For species listed on CITES Appendix I, the U.S. Fish and Wildlife Service must determine that the import (and related offtake) is for purposes that are not detrimental to the survival of the species, and the FWS must issue an import permit.
- For species listed under the ESA, the FWS must make other findings depending on whether the species is listed as endangered or threatened.
- The FWS also monitors imports, regardless of whether the species is listed under CITES or the ESA or not listed at all:
  - Form 3-177 must be completed when any wildlife is imported (or exported).
  - Wildlife may only be imported through designated ports.
  - FWS Law Enforcement personnel staff these ports and inspect all wildlife shipments for compliance with international and national law, as well as laws related to animal health.
  - Law Enforcement personnel have authority to seize non-compliant shipments.

# U.S. Federal Regulation – Endangered Species

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- Section 9 of the ESA prohibits the import of **endangered** species.
- Section 10, however, allows the FWS to permit any prohibited act “for scientific purposes or to enhance the propagation or survival of the affected species.”
  - The FWS generally defines “enhancement” as to require demonstrable benefits for the species, such as anti-poaching, community support, or habitat preservation (or a combination of these factors).
  - Notice of the permit application and the opportunity for public comment on the application must be published in the Federal Register. Issuance of the permit must also be published.



# U.S. Federal Regulation – Threatened Species

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- Section 4(d) authorizes the FWS to adopt regulations “necessary and advisable to provide for the conservation of” threatened species.
- In 1975, the FWS adopted a blanket rule extending the same prohibitions applicable to endangered species to threatened species (subject to exception by a Section 4(d) “special” rule).
  - This regulation extended the prohibition on import, but FWS regulations provided that a permit could be issued for enhancement of survival.
  - In 2019, the blanket rule was repealed for species listed in the future, but the Biden Administration reversed two weeks ago.
- The FWS has also adopted a number of 4(d) special rules which govern the import of species like elephant, leopard, lion, argali, and markhor.

# U.S. Federal Regulation

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(2) Any importation into the United States of fish or wildlife shall, if —  
    (A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,  
    (B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,  
    (C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and  
    (D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

- ESA Section 9(c)(2) presumes the legality of a (1) non-commercial import of a (2) threatened species that (3) is on CITES Appendix II.
  - Unless the FWS rebuts this presumption with a special rule, species listed as threatened and on CITES Appendix II may be imported without an ESA permit as long as the CITES permit requirements are met.

# Practical Application of the ESA and CITES to Hunting Trophies

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- No issue for most plains game, aside from bontebok.
- Issues for some of the “Big Five,” which are listed under both the ESA & CITES.
  - *Elephant* – split-listed under CITES, threatened under the ESA (2024 Rule)
  - *Leopard* – Appendix I of CITES, split-listed under the ESA (No enhancement permit required)
  - *Lion* – Appendix II of CITES, split-listed under the ESA (treated just like endangered)
  - *Black and [Southern] White Rhino* – complicated
- Processing backlog has caused years-long delays for import permits.
- Recent Elephant Rule highlights problems with FWS use of stricter domestic measures.

# 2024 Elephant Rule

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- On April 1, 2024, the U.S. Fish and Wildlife Service amended the 4(d) special rule for elephants.
- The FWS created new requirements for imports:
  - Annual certification from each range state to demonstrate enhancement.
  - Restrictions based on CITES National Legislation Project designation.
  - New permitting and certification requirements for import of live elephants.
- New rule effectively applies more stringent restrictions to import of threatened-listed elephants than would apply if elephants were listed as endangered; turning the ESA on its head.

# 2024 Elephant Rule

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- SCI sent DOI/FWS a notice of intent to sue:
  - New restrictions are not “necessary or advisable.”
  - New restrictions do not “encourage” foreign conservation under Section 8(b).
  - Failure to meaningfully consult with affected range states, a CITES requirement.
  - Conflicts with the text and spirit of the ESA’s presumption of legal import under Section 9(c)(2).

# 9(c)(2) Congressional Intent

- John Dingell, primary drafter of the ESA, included 9(c)(2) specifically to protect imports of species from countries with healthy populations of game species.
- His statements explaining this section reflect an understanding that Interior would not obstruct imports...
- AECA also recognizes benefits of elephant hunting.

H.R. 37 has been attacked by some as an anti-hunter bill; it has been attacked by others as a prohunter bill. In reality, it is neither—it is a bill which has been carefully drafted to encourage State and foreign governments to develop healthy stocks of animals occurring naturally within their borders. If these animals are considered valuable as trophy animals, and are not endangered, they should be regarded as a potential source of revenue to the managing agency and they should be encouraged to develop to the maximum extent compatible with the ecosystem upon which they depend.

I have been informed by the Department of the Interior that they will carefully review the status of animal stocks in foreign countries and that where non-endangered trophy animals are being managed in such a way as to assure their continued and healthy existence, no barriers will be placed upon the continued harvesting of those animals by the government. This is as it should be, because it is only in the understanding that these animals have a real and measurable value that many of the less developed countries will agree to take steps to assure their continued existence.

FACILITATING THE IMPORT OF FOREIGN WILDLIFE FROM HEALTHY  
POPULATIONS.

(a) IN GENERAL. Section 9(c)(2) of the Act (16 U.S.C. § 1538(c)(2)) is amended as follows:

(2) Any importation into the United States of fish or wildlife ~~shall be lawful, and not subject to permit requirements or other regulation by the Secretary pursuant to this Act, if —~~

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,  
~~be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.~~

## Potential 9(c)(2) Fix

- Making this provision mandatory would:
  - Be consistent with Congress' intent;
  - Encourage foreign conservation programs (see ESA Sec. 8);
  - Improve species conservation and rural community development;
  - Reduce Service burden, backlog, and costs; and
- Align with the Executive Order on Racial Equity and Underserved Communities.

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