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**Congress of the United States**  
**House of Representatives**

**BRENDAN F. BOYLE**  
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COMMITTEE ON  
FOREIGN AFFAIRS  
SUBCOMMITTEE ON:  
THE MIDDLE EAST AND NORTH AFRICA  
COMMITTEE ON  
OVERSIGHT AND GOVERNMENT  
REFORM  
SUBCOMMITTEE ON:  
HEALTH CARE, BENEFITS, AND  
ADMINISTRATIVE RULES  
TRANSPORTATION AND PUBLIC ASSETS

June 24, 2016

Daniel M. Ashe  
Director  
U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Dear Director Ashe,

Thank you for the important work you do at the U.S. Fish and Wildlife Service (FWS) to uphold strong American traditions of wildlife protection and environmental stewardship.

I write to express my concern with two practices in which the FWS is engaged that relate to the enforcement of the Endangered Species Act (ESA) and the issuance of permits to entities that seek to engage in activities that would otherwise be prohibited by the ESA.

**I) FWS Wrongly Issuing Permits for Prohibited Activities**

As you know, the ESA prohibits the trade of, and certain treatment of, animals of species deemed threatened or endangered.<sup>1</sup>

The ESA contains provisions that allow certain entities in specific, narrow circumstances to obtain a permit to engage in an otherwise prohibited activity if the activity would enhance the propagation of the species in question.<sup>2</sup> An ideal example of this would be the FWS issuing a permit for a university to import an endangered species for the purpose of treating that animal for a medical condition and once healthy, re-releasing it to the wild.

However, in recent years the FWS has issued permits for activities that do not help the animal in question, nor the species to which it belongs. For example, the FWS has issued permits to companies to use endangered tigers and elephants in traveling circuses, as well as to individuals whose only aim is to kill highly endangered rhinoceroses for sport. The law is clear that the action the permit holder seeks to take must in and of itself benefit the species in some way. In the case of trophy hunting, there is little evidence that killing individual animals or contributing

<sup>1</sup> U.S. Fish and Wildlife Service. Endangered Species Act: Overview. Last accessed June 20, 2016. Available at: <https://www.fws.gov/endangered/laws-policies/index.html>.

<sup>2</sup> Endangered Species Act of 1973. §10(a)(1)(A). Last accessed June 20, 2016. Available at: <http://legcounsel.house.gov/Comps/Endangered%20Species%20Act%20Of%201973.pdf>

money to groups that promote the practice help endangered species generally.<sup>3</sup> Conversely, evidence shows that trophy hunting often does harm to endangered species conservation.<sup>3</sup>

I have attached an illustrative sample of recent concerning “pay-to-play” ESA permits awarded by FWS in Appendix A.

## **II) FWS’s “Pay-to-Play” Scheme to Justify these Permits**

As previously stated, the FWS is issuing permits for activities that do not benefit the species.

In exchange for these improper permits, it has come to my attention that the FWS developed regulations – 50 CFR 17.22(a)(2) and 17.32(a)(2) – that allow applicants to make a monetary contribution to what is often an un-vetted and questionable entity based in the U.S. or a foreign country that purports to have a conservation mission.

The FWS’s apparent reasoning is that if an action that hurts a species takes place, it can be approved if a donation to a charity is made, thereby providing an “indirect benefit” to the species in question.<sup>4</sup> There are no standard requirements or criteria for such donations or entities; rather, these decisions are made by FWS staff on a case-by-case basis, and no oversight or inspection is required to ensure the intended conservation benefit results. Often, as is clear in Appendix A, the charities receiving donations are closely tied to the permittee or have little to no involvement in the conservation of ESA-protected animals in the wild.

This little-known permitting loophole is undermining our collective, global efforts to help preserve animal species protected from abuses under the ESA.

### **Seven Key Concerns**

As outlined below, I am deeply concerned about how widespread this practice is becoming; the lack of oversight from FWS through internal guidelines, record keeping, or follow up; the fact that federal workers are picking winners and losers among foreign entities and steering donations to them without accountability or oversight; and the fact that this is occurring contrary to the purpose of the ESA and without clear legal authority.

#### **1) FWS Operating Without Authority**

Because the ESA does not provide any specific guidance on "enhancement," FWS developed regulatory language (50 CFR 17.22(a)(2) and 17.32(a)(2)) that lay out the issuance criteria and thereby ask if the proposed activity would have a direct or indirect benefit to the species.

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<sup>3</sup>House Natural Resources Committee Democrats. New Analysis: Wildlife Trophy Hunting Often Doesn’t Bring Species Conservation Benefits Claimed by Promoters. Last accessed June 20, 2016. Available at: <https://democrats-naturalresources.house.gov/media/press-releases/new-analysis-wildlife-trophy-hunting-often-doesnt-bring-species-conservation-benefits-claimed-by-promoters>.

<sup>4</sup> See, e.g., Draft Policy for Enhancement-of-Survival Permits for Foreign Species Listed Under the Endangered Species Act, 68 Fed. Reg. 49512-02 (2003).

To put these practices on clear legal footing, the agency proposed a pay-to-play regulation in 2003<sup>4</sup>, but dropped the proposal after receiving overwhelming opposition from conservation groups, animal protection organizations and a coalition of hundreds of scientists led by E.O. Wilson and Jane Goodall.

However, in or around 2011, the FWS apparently decided to do an end run around the notice-and-comment rulemaking procedure and, instead, surreptitiously implemented a pay-to-play policy.

## **2) More than 1,000 Instances of Pay-to-Play in the Past Five Years**

This problem is not limited to a handful of cases over the last few years. In February 2016, the FWS confirmed to my office via the Congressional Research Service (CRS) that the “vast majority” of 1,375 ESA permits issued in the last five years involved pay to play payments.

If I interpret “vast majority” as 90 percent, for example, it would mean that the FWS has facilitated a violation of the ESA every working day for the last five years.

This involves FWS staff advising potential ESA violators that they may possess, sell, exhibit, import hunting trophies of, or otherwise exploit ESA-protected animals if the group first makes a monetary contribution of as little as \$500 to an outside conservation group that is not vetted in any standard way.

## **3) Failure to Develop Internal Standards or Guidelines**

It was also communicated to my office that the FWS has no standard criteria or restrictions for the types of alleged conservation programs eligible to receive funds under these ad hoc arrangements. Rather, the evaluation of a conservation program is made on a case-by-case basis considering what the applicant is contributing and whether the contribution would make a substantial or measurable benefit in the personal, subjective opinion of an FWS employee.

## **4) Record-Keeping Failures**

FWS is not keeping adequate records on the payments it steers to un-vetted foreign and domestic entities under this unauthorized program. When asked how many FWS applicants were allowed to demonstrate species enhancement through financial support to conservation programs in the last five years, the FWS told CRS it does not keep record of the exact number of applicants or amounts contributed under this program. However, FWS did share that it has issued approximately 1,375 ESA permits in the last five years, and that the “vast majority of these involved applicants providing a financial contribution to show enhancement.”

## **5) The FWS Steering Donations to Un-vetted Domestic and Foreign Charities**

FWS employees often suggest that applicants contact particular non-governmental organizations (NGOs) to donate for the purpose of obtaining the ESA enhancement exemption without any objective criteria or standards for evaluating the quality or record of such entities. From a

government accountability standpoint, this practice is highly troubling, especially when it involves non-U.S. entities over which our government has no authority, and which sometimes operate in nations known for widespread corruption related to wildlife management.<sup>5</sup>

#### **6) Lack of Oversight**

The FWS has no process in place to confirm whether permit holders actually pay money to entities that claim to invest in species conservation in exchange for the ESA take/enhancement exemption. FWS staff members do not conduct field visits or systematic reviews of any kind. Rather, FWS relies on self-reporting by the exemption applicant. This, I believe, is unreliable at best, and amounts to an empty promise in exchange for an exemption to our bedrock species conservation law.

#### **7) Pay-to-Play's Potential Link to International Terror and Trafficking**

In recent years, Congress has issued warnings about the well-established link between wildlife trafficking and international terrorism. In 2015, the House of Representatives passed the Global Anti-Poaching Act (H.R. 2494), which contains two key statements related to these practices:

Poaching and the illicit trade in endangered and threatened wildlife are among the most lucrative criminal activities worldwide, worth an estimated \$7 to \$10 billion annually.

Reporting indicates that a number of rebel groups and terrorist organizations, including Sudan's Janjaweed militia, the Lord's Resistance Army, the Seleka rebel movement in the Central African Republic, and Somalia's al-Shabaab, either participate in or draw funding from illicit wildlife trafficking networks.

It is irresponsible for the FWS to, on an ad hoc basis, steer donations to un-vetted foreign entities given the documented corruption in recipient nations and real potential for these funds to ultimately support trafficking networks.

#### **These Practices Undermine the FWS' Mission: Cecil the Lion Example**

The FWS's pay-to-play scheme is particularly troubling because it undermines important work the FWS is doing in other areas.

For instance, in December 2015, FWS announced that two African lion subspecies—like Cecil the Lion who was famously killed illegally in July 2015—were now protected under the ESA.<sup>6</sup>

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<sup>5</sup>House Natural Resources Committee Democrats. New Analysis: Wildlife Trophy Hunting Often Doesn't Bring Species Conservation Benefits Claimed by Promoters. Last accessed June 20, 2016. Available at: <https://democrats-naturalresources.house.gov/media/press-releases/new-analysis-wildlife-trophy-hunting-often-doesnt-bring-species-conservation-benefits-claimed-by-promoters>.

<sup>6</sup>U.S. Fish and Wildlife Service. Endangered Species Act Listing Protects Lions in Africa and India, Director's Order Strengthens Wildlife Import Restrictions for Violators of Wildlife Laws. Last viewed June 20, 2016. Available at: [https://www.fws.gov/news/ShowNews.cfm?ref=endangered-species-act-listing-protects-lions-in-africa-and-india-&\\_ID=35403](https://www.fws.gov/news/ShowNews.cfm?ref=endangered-species-act-listing-protects-lions-in-africa-and-india-&_ID=35403).

This critical development was intended to ensure that lions like Cecil couldn't be hunted and their trophies shipped back to the United States. However, the existence of the FWS's pay-to-play loophole renders the December 2015 development potentially useless, as the loophole would allow a trophy hunter to kill and import the remains of an ESA-protected African lion if they first donate a trivial amount of money to a foreign entity for the supposed but unconfirmed intention of species enhancement, with no oversight or accountability.

### **Request**

I appreciate your attention to this matter and request your assistance in helping my office learn more about the issues outlined in this letter. In addition, I respectfully request the FWS take the following steps as soon as possible:

**End both troubling practices:** I urge you to immediately 1) end the issuance of permits for activities that fail to benefit the species, and 2) end the related and potentially unlawful "pay-to-play" practice through which the FWS is apparently justifying the issuance of such permits.

**List of countries and entities:** Given the aforementioned concerns with regards to these practices, it is important for Congress to know where FWS officials are essentially steering donations. As such, I request a list of the countries which are home to entities that FWS officials steered applicants to financially support in exchange for the right to violate the ESA.

**Maintain current records:** Given the scarcity of records that the FWS has maintained since this practice began, I expect the FWS will ensure no documents related to these issues will be destroyed given the possibility of further investigation into these matters.

Once again, thank you for your assistance and for your efforts to ensure that the critical work being done by hardworking staff at the FWS continues into the future. I look forward to working with you to address these concerns and uphold the species protection aims of the ESA.

Sincerely,

  
Brendan F. Boyle  
Member of Congress

Enclosures: Appendix A: Examples of Recent FWS "Pay to Play" Permits to Violate ESA  
cc: The Hon. Mary L. Kendall, Inspector General, U.S. Department of Interior

## APPENDIX A: Examples of Recent FWS “Pay to Play” Permits to Violate ESA

Permit Recipient	Proposed ESA Violations	Alleged Donation Recipient	Alleged Donation Amount	FWS Confirmation of Donation & Alleged Conservation Benefit <sup>1</sup>	Year	Permit Number(s)
Patty Perry (Wildlife & Environmental Conservation, Inc.)	Lease two captive-born African leopards to use in traveling exhibit	Feline Conservation Federation (US) <sup>2</sup>	\$1,000/yr in 2015 and 2016	N/A	2015/2016	PRT-75313B
Festival Fun Parks, LLC	Purchase and transport 10 endangered African penguins to exhibit at seaquarium	South African Foundation for the Conservation of Coastal Birds	\$1000/yr for 5 years <sup>3</sup>	N/A	2015/2016	PRT-65772B
Corey Knowlton (Dallas Safari Club)	Hunt and import black-rhino trophy from Namibia	Namibian Game Products Trust Fund <sup>4</sup>	\$350,000	N/A	2015	PRT-33291B
Michael Luzich (Dallas Safari Club)	Hunt and import black-rhino trophy from Namibia	Namibian Game Products Trust Fund <sup>1</sup>	\$200,000	N/A	2015	PRT-33743B
Ringling Brothers Circus	Import two endangered tigers from Europe for use in a traveling circus	Tigris Foundation (Netherlands); AARANYAK (India)	\$25,000; \$3,000 (\$28,000 total) <sup>5</sup>	N/A	2014	PRT-22194B (tiger permits)
Ringling Brothers Circus	Export and re-import 9 endangered Asian elephants for use in a traveling circus	International Elephant Foundation (US); <sup>6</sup> Smithsonian Institute (US) <sup>7</sup>	\$500,000 over 15 years; \$180,000 over multiple years	N/A	2013-16	PRT-91256A et al. (elephant permits)
Hawthorn Corporation	Export and re-import 7 endangered tigers for use in a traveling circus	National Conservation Authority’s Global Tiger Initiative (India)	\$50,000 over 3 years, incl. lobbyist salary and expenses <sup>8</sup>	N/A	2013	PRT-058735 et al.
Yerkes National Primate Research Center	Use white-collared mangabeys in invasive and deadly infectious	Centre Suisse de Recherche Scientifique (Côte d'Ivoire)	\$25,000/yr	N/A	2011-16	PRT-837068

<sup>1</sup> FWS has confirmed to Rep. Boyle’s office that it does not ensure that donations are made or properly spent on conservation as described in ESA permits.

<sup>2</sup> Rather than conserving animals in the wild, FCF’s primary mission is to encourage captive breeding and defend private ownership of wild feline species.

<sup>3</sup> This nominal donation was not even made by ESA permittee Festival Fun Parks, but by the owner of the company that sold them the animals, Fleming Creative Concepts.

<sup>4</sup> NGPTF has been criticized for raising most of its revenue from controversial ivory sales, creating concerns about driving demand spikes and poaching.

<sup>5</sup> This is 0.056% or less of Ringling’s annual profits, see Glenn Collins, Circus Flies O’er Troubles with Greatest of Ease, N.Y. TIMES, Mar. 23, 2009 (reporting that Ringling makes annual profits of \$50 million to \$60 million), and only 0.035% of the total amount needed annually to keep tigers alive in the wild. See Richard Black, Pricetag Set for Tiger Conservation, BBC NEWS, Sept. 14, 2010 (discussing a recent scientific article that places the cost of conserving tigers in forty-two selected breeding sites at \$80 million annually).

<sup>6</sup> IEF was co-founded by Ringling, and Ringling employees currently sit on its board. It works extensively to advance the interests of the U.S. captive elephant industry.

<sup>7</sup> Granting a federal permit to violate ESA on the condition of a donation to another federal agency constitutes preferential treatment for a financial contribution.

<sup>8</sup> FWS Chief of the Division of Management Authority told staff that, “[the application]’s weak, but I say we accept it and let’s get the permits out.”

**APPENDIX A: Examples of Recent FWS “Pay to Play” Permits to Violate ESA**

	disease experiments <sup>9</sup>					
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<sup>9</sup> Yerkes’ FWS-approved ESA application for these experiments do not describe any benefits of these proposed studies for the species in the wild.