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2017]

CECIL THE LION: THE EVERLASTING IMPACT ON THE
CONSERVATION AND PROTECTION OF
THE KING OF THE JUNGLE

I. INTRODUCTION

As of January 22, 2016, the United States (U.S.) Federal Register reflects a significant addition to the Endangered Species Act (ESA).¹ Under the ESA, the African lion will now be a protected species.² The addition arrives years after continued lobbying from animal welfare and activist groups, and five months after the highly publicized killing of Zimbabwe's beloved Cecil the lion (Cecil).³ The untimely death of Cecil at the hands of U.S. dentist turned "poacher," Walter Palmer (Palmer), constituted a defining moment in lion activists' pursuit to protect the majestic species.⁴ The unfortunate occurrence "changed the atmospherics on the issue of trophy hunting around the world" and facilitated a controversial debate on the topic.⁵

Congress specifically approved and passed the ESA to preserve animal species whose existence is moving toward extinction.⁶ Further, environmental activists precipitated the progressive congressional development.⁷ In addition to natural changes in the environment, human behavior continues to influence climate change.⁸ Specifically, trophy hunting, poaching, and exotic animal

1. Danny Clemens, *U.S. Protects African Lions Under Endangered Species Act*, DISCOVERY NEWS (Dec. 21, 2015, 3:52 PM), <http://news.discovery.com/animals/endangered-species/us-protects-african-lions-under-endangered-species-act-151221.htm> (noting inclusion of African lions to ESA as protected animal).

2. *Id.* (explaining importance in adding lions to ESA).

3. Erica Goode, *After Cecil Furor, U.S. Aims to Protect lions Through Endangered Species Act*, NEW YORK TIMES (Dec. 20, 2015), http://www.nytimes.com/2015/12/21/science/us-to-protect-african-lions-under-endangered-species-act.html?_r=2 (noting lobbying time period).

4. *Id.* (reflecting on lion activists' struggle to protect lions under ESA).

5. *Id.* (noting impact of Cecil's death, including addition of lions to ESA). "Lions in central and West Africa will be listed as endangered" and "lions in southern and East Africa will be classified as threatened, with a special rule that prods countries to regulate sport hunting of lions in ways that promote conservation."
Id.

6. *Endangered Species Act*, HOUSE COMM. ON NATURAL RES., <http://naturalresources.house.gov/esa/> (last visited Jan. 10, 2017) (noting overview of ESA).

7. *Id.* (establishing why Congress passed ESA).

8. *Id.* (providing reason for inception of ESA).

trading contribute to negative fluxes in wildlife conservation.⁹ This Comment will explore the ESA, its evolution, and fluctuations resulting from intrusive human actions, such as poaching.¹⁰

Furthermore, this Comment will explore the likelihood of successfully preserving threatened animal species, with a specific focus on the preservation of the African lion species.¹¹ Because Congress recently added the African lion to the ESA, the likelihood of success has much to be contemplated and discussed.¹² Additionally, dentist Palmer's illegal luring and "hunting" of Cecil will be explored.¹³ More specifically, this Comment will analyze how this notorious trophy hunt fostered critical debate throughout the U.S. and the world at large.¹⁴ Precipitated through social media platforms, this incident swiftly brought the shock of trophy hunting to the forefront of popular knowledge.¹⁵ Unfortunately, Palmer's hunt is an example of the broader issue surrounding the declining numbers of lions and has spurred the attention of a much more expansive, perhaps rowdy audience.¹⁶

II. BACKGROUND

A. The Endangered Species Act

"We owe it to our children and grandchildren to be good stewards of the environment and leave behind a legacy of

9. See Goode, *supra* note 3 (noting contributions to negative wildlife population fluctuations).

10. See *Endangered Species Act*, UNITED STATES FISH & WILDLIFE SERV., <http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/endangered-species-act.html> (last visited Jan. 10, 2017) (finding ESA as important framework for wildlife conservation efforts).

11. See Goode, *supra* note 3 (noting significant change to atmosphere surrounding trophy hunting). "In the months since [Cecil's death], France has banned the import of lion trophies, and Britain has said it will do so in 2017, barring 'significant improvement in the performance of the hunting industry.' More than [forty] airlines have also said they will no longer transport hunting trophies." *Id.*

12. *Id.* (establishing addition of lions to ESA).

13. *Id.* (noting circumstances leading to Cecil's death).

14. *Id.* (regarding Cecil's death as defining moment in movement to lion inclusion in ESA).

15. Jennifer Marino Walters, *The Death of Cecil the Lion: An American hunter kills a beloved lion in Africa and causes an Internet storm.*, SCHOLASTIC (Aug. 4, 2015), <http://magazines.scholastic.com/news/2015/08/The-Death-of-Cecil-the-Lion> (establishing story surrounding Cecil's death and precipitated outrage).

16. See Clemens, *supra* note 1 (noting importance of African lions to ESA).

protecting endangered species and the special places they call home.”¹⁷

“The Endangered Species Act (ESA) of 1973 is a key legislation for both domestic and international conservation.”¹⁸ It is the most prominent law in the pursuit to preserve the world’s endangered wildlife population.¹⁹ “The [ESA] aims to provide a framework to conserve and protect endangered and threatened species and their habitats.”²⁰ Additionally, the ESA fosters regrowth of threatened or endangered species’ populations, grants authority to reprimand perpetrators, and fosters rehabilitation and conservation of dwindling species.²¹

In essence, the ESA supports the maintenance of natural systems and structures that provide the U.S. with clean air, water, food, medicines, and other products that the population needs to thrive and flourish.²² Such support benefits humans and animal species through the growth of environmental preservation.²³

The ESA delegates power to the U.S. Fish and Wildlife Service (USFWS) to manage and oversee the administration of the ESA.²⁴ Accordingly, the USFWS manages the listing and protection “of all terrestrial animals and plants[,] as well as freshwater fish.”²⁵ When it is necessary to investigate the current health of a species, the USFWS relies on scientific data.²⁶ “[L]ocal, state, and national scientists” compile the data, which allows the USFWS to determine whether a species is “endangered” or “threatened.”²⁷ Species listed

17. *Endangered Species Act 101*, DEF. OF WILDLIFE, <http://www.defenders.org/endangered-species-act/endangered-species-act> (last visited Jan. 10, 2017) (stating historic background of ESA).

18. *See Endangered Species Act*, *supra* note 10 (noting general overview of legislative history of ESA).

19. *Id.* (finding continued success from implementation of Act).

20. *Id.* (noting ESA’s framework to protect wildlife).

21. *Id.* (describing ESA attempts to establish regrown of threatened and endangered populations).

22. *Id.* (noting human benefits from ESA).

23. *See Endangered Species Act*, *supra* note 10 (establishing both human and animal beneficiaries from ESA).

24. *Endangered Species Act*, NATIONAL WILDLIFE FEDERATION, <https://www.nwf.org/Wildlife/Wildlife-Conservation/Endangered-Species-Act.aspx> (last visited Sept. 30, 2016) (explaining delegation of power to USFWS under ESA).

25. *Id.* (noting significant duty of USFWS under ESA).

26. *Id.* (establishing investigation process of USFWS under ESA).

27. *Id.* (holding that establishing species as endangered or threatened grants protection under ESA). Numerous factors go into a species being added to the protection of the ESA. *See id.* Such factors include habitat depletion, species depletion, and human interaction. *See id.*

under the ESA are granted protections by the U.S. federal government.²⁸

There are key areas where improvements could make the law more effective for both animal species and humans in the twenty-first century.²⁹ As with any legislation, political factors hinder progression.³⁰ Moreover, while the ESA cannot regulate and mandate rules for other countries, it can regulate American trophy hunters returning to the U.S. with their coveted animal trophies, as well as provide a viable structure for other countries to imitate.³¹ Notably, in relation to lion protection, the U.S. government has historically been delayed in establishing defensive measures.³² Despite the flaws attributable to the ESA, such as the delay in including lions, “[l]ess than one percent of the more than [two thousand] plants and animals protected by the [ESA] worldwide have ever been formerly delisted due to extinction – an amazing success rate.”³³

B. The African Lion

Fewer than twenty-one thousand lions remain in Africa today.³⁴ Two times that amount of lions existed, and thrived, in Africa until the 1950s.³⁵ Additionally, “[t]hough lions used to live in most parts of Africa, they are now found only in the south Sahara desert and in parts of southern and eastern Africa.”³⁶ In the past, lions also inhabited areas of Greece and across the Middle East and Northern India.³⁷ Areas of such inhabitation are difficult to envision today due to the species’ threatened existence and rapidly dwindling population.³⁸

28. See *Endangered Species Act*, *supra* note 24 (finding federal government protected lion species under ESA with inclusion to Act).

29. See *Endangered Species Act*, *supra* note 6 (finding it difficult to enact change to ESA due to extensive political polarization).

30. *Id.* (noting overview of problems surrounding ESA’s success).

31. Justin Worland, *African Lions to Be Protected as Endangered Species*, TIME, <http://time.com/4157046/lions-endangered-species-act/> (last updated Dec. 21, 2015, 2:16 PM) (elucidating new regulations and restrictions on trophy hunting).

32. *Id.* (noting U.S. progress somewhat lagging behind other countries with lion protection due to numerous 101 inhibitors).

33. See *Endangered Species Act*, *supra* note 17 (establishing overview of ESA and astounding success rate).

34. *Basic Facts About Lions*, DEF. OF WILDLIFE, <https://web.archive.org/web/20160103004841/http://www.defenders.org/african-lion/basic-facts?> (last visited Jan. 12, 2017) (noting Africa lion population decline by more than half since 1950s).

35. *Id.* (finding drastic decline in African lion populations).

36. *Id.* (noting vast previous habitats of lions throughout world).

37. *Id.* (elucidating historic location of lions in other parts of world).

38. *Id.* (finding historic locations of lion populations hard to envision).

In addition to the declining presence of such majestic animals, an infinite number of other issues amass.³⁹ Such issues include a windfall of ecological effects.⁴⁰ One commentator has stated,

The first of these would be an increase in some of the lion's prey, such as wildebeest and buffalo, which would also become less alert and less active in the absence of a fearsome predator. These larger, more stagnant populations of herbivores could overgraze their habitat, leading to soil erosion that[,] in turn[,] causes poor water quality downstream and aids the invasion of weeds and exotic plant species. Finally the bloated populations of prey could collapse, as the degraded habitat can no longer support them.⁴¹

Thus, the extinction of this grandiose animal not only affects the species itself, but it also has a disastrous, cascading ramification on the entire surrounding habitat.⁴² Issues, like the extinction of the African lion, bolster the purpose and existence of the ESA and are confirmation of the importance of the Act's regulations and enforcement.⁴³ This importance is further underscored with regard to lions because lions reside at the top of the food chain.⁴⁴ Eliminating a predator, who is markedly nicknamed the "king of the jungle," hints at the potential ruinous outcome this extinction could produce on the world.⁴⁵

Yet, activists have lobbied for years, but to no avail, to have lions listed as a protected species under the ESA.⁴⁶ Real movement towards change, however, catalyzed after an incident drawing the

39. *Basic Facts About Lions*, *supra* note 34 (noting other issues generated from declining numbers of lions).

40. Dereck Joubert, *Can We Save Lions?*, DEF. OF WILDLIFE, <http://www.defenders.org/magazine/fall-2010/can-we-save-lions> (last visited Jan. 11, 2017) (noting importance of lion population to entire animal kingdom).

41. *Id.* (holding extinction of lions as catalyzing catastrophic ecological issues).

42. *Id.* (noting necessity of addition to lions to ESA).

43. *Id.* (finding lions as example of importance of ESA).

44. *Id.* (eluding to windfall effect on animal kingdom of lion extinction).

45. *Everything You Didn't Know About Animals*, NAT. GEOGRAPHIC, <http://channel.nationalgeographic.com/wild/everything-you-didnt-know-about-animals/videos/king-of-the-jungle/> (last visited Jan. 10, 2017) (explaining why lions are king of jungle).

46. *See* Goode, *supra* note 3 (noting timeline and factors present for inclusion of lions in ESA); *see also* Worland, *supra* note 31 (finding activists lobbied for four years to protect lions).

attention of the national media.⁴⁷ Notably, the social media sensation surrounding the death of Cecil catapulted lion activists' proposal to the forefront of the general political agenda.⁴⁸ Publicity rapidly influenced the discussion, facilitated the question of which authorities were accountable for this tragedy, and precipitated the eventual addition of lions to the list of endangered species under the ESA.⁴⁹

Palmer, the dentist from Minneapolis, is now a vilified household name.⁵⁰ Palmer traveled across the world to hunt in "a 'guaranteed kill' arrangement."⁵¹ Under the cover of darkness, he and his guides lured Cecil out of the preservation park and killed him.⁵² Cecil was a thirteen-year-old African lion.⁵³ Since 2008, Oxford University researchers tracked and studied Cecil.⁵⁴ He stood out in Zimbabwe's Hwange National Park, donning a unique black mane.⁵⁵ To embark on the journey to hunt Cecil, Palmer reportedly paid Zimbabwean guides fifty thousand dollars.⁵⁶

Following the highly exposed incident and overwhelmed by public outcry, "[o]fficials in Zimbabwe ruled that [the] killing was

47. *Id.* (expressing success of lion lobbyists following death of Cecil); *see also* Wayne Pacelle, *US Provides Endangered Species Act Protection for African Lions – Seeks to Avoid Sequel to Cecil Killing*, HUFFPOST GREEN (Dec. 21, 2015, 10:21 AM), http://www.huffingtonpost.com/wayne-pacelle/us-provides-endangered-sp_b_8853884.html (demonstrating U.S. attempts to avoid another Cecil death).

In a move sure to be jarring to the worldwide trophy hunting industry, and that could gut South Africa's canned hunting industry, the United States signaled that it will classify the African lion as threatened or endangered across its entire range in Africa. This action comes four and a half years after several organizations, including The HSUS, International Fund for Animal Welfare, and Born Free, petitioned the U.S. Fish and Wildlife Service (FWS) to list the African lion as endangered - long before Minnesota dentist Walter Palmer came to personify the threat that globe-trotting trophy hunters pose to the animals.

Id.

48. *See* Pacelle, *supra* note 47 (noting extensive media sensations surrounding death of Cecil).

49. *See* Worland, *supra* note 31 (finding quick action towards lion preservation following death of Cecil).

50. Wayne Pacelle, *American Public Roars After It Gets a Glimpse of International Trophy Hunting of Lions*, A HUMANE NATION (July 29, 2015), http://blog.humane.society.org/wayne/2015/07/cecil-lion-killed-by-trophy-hunter.html?credit=blog_post_122115_idhome-page (laying out how Palmer came to illegally kill Cecil).

51. *Id.* (noting Palmer as killer of Cecil). A guaranteed kill is a hunt in which a hunter enlists the help of guides to track and kill a certain animal species. *Id.*

52. *Id.* (establishing how Palmer and guides lured Cecil from preservation park).

53. *See* Walters, *supra* note 15 (establishing story surrounding Cecil's death).

54. *Id.* (noting Oxford researchers have been following Cecil since 2008).

55. *Id.* (finding Cecil's black mane distinguishing feature of beloved lion).

56. *Id.* (noting reported expense of Palmer's trophy hunt).

illegal because of how it was carried out, but the practice is still legal for those willing to pay.”⁵⁷ The media sensation and scrutiny surrounding the incident forced Palmer “[to go] into hiding.”⁵⁸ Unfortunately, in the grand scheme of lion conservation, the story surrounding Cecil’s death is neither unique nor uncommon.⁵⁹

Notably, the U.S. is one of the largest importers of African lions, generally for the sole purpose of importing hunting trophies.⁶⁰ “Between 1999 and 2013, the [U.S.] imported about 5,763 wild-source lions just for hunting trophy purposes; and the last five years of this period averages to 378 wild-source lions per year.”⁶¹ “[These] numbers ha[ve] increased [with]in recent years.”⁶² Thus, due to the strong presence of U.S. hunters involved in the overall picture of lion preservation, the ESA’s addition of African lions to the list of protected wildlife should, and hopefully will, support a positive outcome for lions.⁶³

III. PRESENT STATE OF THE ISSUE

It is difficult to fully grasp the extensiveness of the rapid decline in the lion population.⁶⁴ Acknowledging the role of humans, specifically Americans, is difficult to process.⁶⁵ Despite these complications, it is the current generation’s role to preserve, raise awareness, and further scrutinize the dynamics that affect the decrease in lion populations.⁶⁶ “It is our responsibility to make sure that Americans are not contributing to the elimination of Africa’s

57. See Worland, *supra* note 31 (noting legality surrounding Cecil’s death); see also Justin Worland, *U.S. Government Investigating Death of Cecil the Lion*, TIME (July 29, 2015), <http://time.com/3977476/cecil-the-lion-investigation/> (providing information surrounding investigation of Cecil’s death).

58. See Walters, *supra* note 15 (noting how Palmer forced to hide after Cecil’s death). Furthermore, Palmer also “released a statement saying [that] he [believed] the hunt [to be] legal.” *Id.*

59. See Pacelle, *supra* note 47 (finding Cecil’s story not unique to entire scheme of lion conservation).

60. *Id.* (noting large U.S. hunter presence in African hunting game).

61. See Pacelle, *supra* note 50 (finding increase in American trophy hunters’ exports of lion parts).

62. *Id.* (noting increase in lions imported).

63. See Pacelle, *supra* note 47 (noting strong American presence in scheme of lion conservation).

64. *Snippets: A Defenders’ Roundup*, DEFENDERS OF WILDLIFE, <http://www.defenders.org/magazine/spring-2011/snippets-defenders-roundup> (last visited Jan. 10, 2017) (noting difficulty of entirely understanding substantial decline in lion population).

65. *Id.* (noting lions need human help for conservation and preservation).

66. *Id.* (expressing need for leadership and accountability to save lion populations).

most iconic wildlife species.”⁶⁷ American citizens should take every effort to support the protection of these beautiful animals.⁶⁸

Due to the frightening decline in lion-inhabited locations and population, groups, including the Defenders of Wildlife, have lobbied and “petitioned the U.S. Fish and Wildlife Service (FWS) to list the African lion as endangered[.]”⁶⁹ Successfully recognizing lions as protected animals adequately centers global focus and concentration on helping save lions from their plight.⁷⁰ Further, such regulation establishes a framework to prohibit the importation of lion trophies and body parts to the U.S., specifically.⁷¹ This type of regulation and legal protection will hopefully “encourage Congress to provide funding to start up lion conservation projects in Africa.”⁷²

Lion activists, wildlife supporters, and environmental groups lobbied and petitioned the USFWS for four years until the final issuance of a ruling that added lions to the ESA.⁷³ This final issuance occurred on December 21, 2015.⁷⁴ As a result, the USFWS divided lions into three subspecies, each receiving a different level of protection.⁷⁵ The USFWS includes two subspecies of lions under the ESA as “endangered.”⁷⁶ These two subspecies are specifically listed as endangered “due to ongoing habitat loss (fragmentation and degradation), loss of prey base, retaliatory killing from increased human/lion conflicts, inadequate regulatory mechanisms, and

67. *Id.* (quotation marks omitted) (establishing need of Americans to help preserve lion populations).

68. *Id.* (finding it essential to support conservation efforts).

69. *See Pacelle, supra* note 47 (noting extensive lobbying and petitioning conducted on behalf of lions).

70. *Id.* (finding addition of lions to ESA can hopefully attain national attention).

71. *Id.* (finding such regulation can likely lead to probation on importing lion trophies and lion body parts to U.S.). Notably, “[f]rom 1999 through 2008, the United States imported at least 4,800 lion trophies, and that number is on the rise [;] [i]n 2008, trophy imports to the United States were greater than any other year and more than twice the number in 1999.” *Snippets: A Defenders’ Roundup*, DEFENDERS OF WILDLIFE, <http://www.defenders.org/magazine/spring-2011/snippets-defenders-roundup> (last visited Jan. 10, 2017).

72. *See Snippets: A Defenders’ Roundup, supra* note 71 (recognizing potential for Congressional funding to aid lion conservation efforts).

73. *Campaigns and Projects – African Lion ESA Petition*, Born Free USA, http://www.bornfreeusa.org/a9c_lions.php (last visited Jan. 12, 2016) (noting extensive lobbying for lion protection).

74. *Id.* (noting date of addition of certain lions to ESA).

75. *Id.* (finding different protections under ESA for different subspecies).

76. *Id.* (noting addition of two subspecies of lions to ESA as endangered). The ESA provides differing levels of degree of protection for the sub subspecies, based on their specific level of need. *See id.*

weak management of lion protected areas.”⁷⁷ Species listed as endangered are “species that are likely to become extinct throughout all or a large portion of their range.”⁷⁸ Recognizably, an endangered species label is the most threatening listing a species can receive.⁷⁹

Contrastingly, the third subspecies, inhabiting a range across Southern and Eastern Africa, is listed under the ESA as “[t]hreatened[.]”⁸⁰ Under the ESA, threatened species are “species that are likely to become endangered in the near future.”⁸¹ Notably, the USFWS reports that the third subspecies’ population, located in Southern Africa, is actually increasing.⁸² Despite this locational growth, however, the USFWS concluded that, ultimately, the population is declining.⁸³ Thus, the USFWS resolved that this third subspecies is adequately embodied in the definition of a “threatened” species under the ESA.⁸⁴ A threatened species receives protection under the ESA, although this protection is not simple to enforce, and therefore, punishment for wrongdoers is often difficult to attain.⁸⁵

For the subspecies listed as “threatened,” rather than “endangered,” the USFWS released a special rule regarding management and preservation.⁸⁶ Section 4(d) of the ESA extends and increases protections, as well as restrains the importation of most sport hunting trophies into the U.S.⁸⁷ In order to legally import trophies into the U.S., hunters must follow certain guidelines that allow them to

77. *Id.* (noting USFWS’s reason for including lions in ESA).

78. *Endangered Species Act*, NAT. WILDLIFE FED’N, <https://www.nwf.org/Wildlife/Wildlife-Conservation/Endangered-Species-Act.aspx> (last visited Sept. 30, 2016) (defining meaning of “endangered” under ESA).

79. *Id.* (highlighting difference between threatened and endangered listing under ESA).

80. *See Campaigns and Projects – African Lion ESA Petition*, *supra* note 73 (finding third subspecies as “threatened”).

81. *See Endangered Species Act*, *supra* note 78 (defining ESA’s use of threatened category); *see also* Pacelle, *supra* note 47 (noting decline in lion population).

82. *See Campaigns and Projects – African Lion ESA Petition*, *supra* note 73 (noting increase in lion population in Southern Africa).

83. *Id.* (holding despite locational population increase, overall population numbers are declining).

84. *Id.* (noting third species successfully falls under definition of “threatened species” under ESA).

85. *Id.* (finding different regulation surrounding threatened species under ESA).

86. *Id.* (establishing new rule for third subspecies of lion).

87. *See Campaigns and Projects – African Lion ESA Petition*, *supra* note 73 (establishing tighter regulation of importing of lion trophies).

attain a permit for such importation.⁸⁸ These “permit applicants will have to demonstrate that a lion was legally obtained as part of a scientific management program that provides long-term benefits to wild lion populations.”⁸⁹ Further, with the addition of lions to the ESA, “the [US]FWS [has the] authority to deny permits to anyone previously found guilty of violating wildlife laws.”⁹⁰

Additionally, the Director of the USFWS supplied a “Director’s Order” that supplements the lion addition to the list of endangered and threatened species under the ESA.⁹¹ The order is complementary to the new regulation, pledging to improve enforcement of permit requirements and subsequent illegal activity.⁹² Additionally, “the recent announcement by U.S. President Barack Obama that he will establish a Presidential Task Force on Wildlife Trafficking to develop a strategy for supporting global anti-poaching efforts” will help combat perpetrators of wildlife laws while also limiting the unnecessary yielding of trophies permits.⁹³ “With this announcement, the President has taken a step to elevate the response to the threat that illegal poaching poses for all wildlife.”⁹⁴ Thus, while the present situation surrounding the protection of lions is hopeful, only the future will reveal the success of this addition to the ESA.⁹⁵

88. *Id.* (outlining guidelines for importing lion trophies in U.S.).

89. *Id.* (noting method for receiving permit to enter U.S.).

90. *See* Worland, *supra* note 31 (establishing authority granted to USFWS to enforce illegal lion activity).

91. *Lions Are Now Protected Under the Endangered Species Act*, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/endangered/what-we-do/lion.html> (last updated Dec. 23, 2015) (finding addition of “Directors Order” complementary to ESA lion addition).

92. *Id.* (describing how director of USFWS pledges to support enforcement of lion protection).

93. Melissa Simpson, *Opinion: African Lions Should Not Be Listed as Endangered*, NAT’L GEOGRAPHIC (Sept. 2, 2013), <http://news.nationalgeographic.com/news/2013/09/130902-african-lions-not-endangered-big-game-hunting/> (offering praise to President Obama in supporting enforcement of permit regulations). President Obama voiced his support for the addition of lions to the ESA, and therefore, was able to rally additional supports and successfully help pave the way for lion protection in the U.S. *See id.*

94. *Id.* (establishing threat of illegal poaching and overall negative effect on wildlife).

95. *See* Pacelle, *supra* note 50 (alluding that future surrounding lions is uncertain).

IV. CRITICAL ANALYSIS: IS AMERICAN TROPHY HUNTING REALLY
THE PROBLEM CAUSING DECLINING LION
POPULATION NUMBERS?

“President Obama’s initiative recognizes that it is illegal poachers, not regulated hunters, who pose a threat to wildlife.”⁹⁶

“As with the regulated hunters in the [U.S.], the regulated hunters in Africa make a vital contribution to conservation efforts, primarily through the revenues their hunting expeditions generate for local communities and wildlife resource agencies.”⁹⁷

The USFWS’ decision to add lions to the list of endangered and threatened species under the ESA is seemingly flawless and supported by the vast majority of Americans.⁹⁸ Despite this, the addition does yield some negative consequences.⁹⁹ The U.S. federal government cannot dictate what other countries can and cannot do.¹⁰⁰ It only has the ability and jurisdiction to dictate the actions of Americans returning to the U.S.¹⁰¹ Yet, proponents of the addition argue that the regulation still has a substantial effect on countries outside of the U.S.¹⁰² Regardless of this jurisdictional limit on the government’s power, “because many trophy hunters are American, the tougher standards for imports could reduce the number of lions killed by hunters.”¹⁰³ Opponents of the addition, to the contrary, argue that the locations affected by the regulations will incur disastrous economic consequences.¹⁰⁴ Trophy hunters advocate that their actions subsidize much of the conservation, which bene-

96. Simpson, *supra* note 93 (explaining benefits of eliminating trophy hunting of African lions and overall preservation of lions).

97. *Id.* (noting conservation efforts made by regulated hunters compared to illegal poaching trade).

98. *See* Goode, *supra* note 3 (suggesting overall support from addition of lions to ESA).

99. *See id.* (explaining addition of lions to ESA is potentially both beneficial and harmful).

100. *See id.* (noting ESA’s limited jurisdiction).

101. *Id.* (establishing lack of ability for U.S. federal government to combat illegal actions of non-Americans).

102. *See id.* (finding positive outcome of classification under ESA for lion population maintenance and potential increase).

103. Goode, *supra* note 3 (establishing potential effect standards will have on African nations).

104. *See id.* (discussing pro-hunting organizations opinions regarding effect on lion conservation and resulting byproducts).

fits the grand scheme of lion conservancy.¹⁰⁵ Seemingly, the issue cuts both ways.¹⁰⁶

Opponents of the addition of lions to the list of endangered and threatened species under the ESA include professional hunting organizations, numerous African citizens, and some African governmental bodies.¹⁰⁷ The individuals directly affected by the regulation, including African residents and trophy hunters, argued against the addition.¹⁰⁸ Such opponents “argue that the money from sport hunting in Africa helps poor countries maintain robust conservation programs and provides aid to local residents.”¹⁰⁹ “Hunting [produces over] . . . [two hundred] million [dollars] in revenue [for Africa] [] year[ly][.]”¹¹⁰ After all, Cecil resided in Hwange National Park, where Oxford University officials studied him for more than a decade.¹¹¹ Further, had Palmer embarked in a trophy hunt legally, defenses previously in place would have safeguarded Cecil as a protected lion.¹¹²

Despite the widespread media attention, the USFWS did not add African lions to the list of endangered and threatened species under the ESA solely because of the incident involving Cecil.¹¹³ Evidence also suggests that the USFWS did not choose to protect lions

105. *See id.* (explaining opinion of trophy hunters and impact on conservation efforts of lions).

106. *See id.* (elucidating hunting organizations’ argument in response to addition of lions to protections afforded under ESA).

107. *See id.* (detailing how some groups and organizations, like professional hunting organizations, numerous African citizens, and some African governmental bodies, oppose regulations).

108. *See* Goode, *supra* note 3 (noting those both negatively and positively affected by new regulation).

109. *Id.* (explaining reasons for supporting opponents’ opinions).

110. *See* Shawn Regan, *After Cecil Uproar, the U.S. Lists Lions as Endangered – But Will It Help the King of Beasts?*, NAT’L REV. (Dec. 28, 2015, 4:11 PM), <http://www.nationalreview.com/article/429049/endangered-species-act-lion-conservation-africa> (noting Africa’s yearly revenue from hunting).

111. *See* Pacelle, *supra* note 50 (discussing Cecil’s location and monitored habitat by Oxford University researchers); *see also* Jason Bittle, *Why Cecil the Lion Was So Popular With People*, NAT’L GEOGRAPHIC (July, 30, 2015), <http://news.nationalgeographic.com/2015/07/150730-cecil-lion-africa-hunting-science-animals/> (expounding upon Cecil’s interaction with humans and existence in Hwange National Park).

112. *See* Walters, *supra* note 15 (noting circumstances surrounding Cecil’s killing); *see also* Melanie Gade, *Killing of Cecil the Lion Highlights Need for Further Lion Conservation*, DEFENDERS OF WILDLIFE (July 30, 2015), <http://www.defenders.org/press-release/killing-cecil-lion-highlights-need-further-lion-conservation> (recounting illegality surrounding Cecil’s death).

113. *See* Simpson, *supra* note 93 (finding USFWS recognizes need for trophy hunting in industry).

just to limit or eventually eliminate trophy hunting;¹¹⁴ their actions are not so transparent.¹¹⁵ Rather, the theory behind requiring more stringent permits reflects the USFWS' effort to preserve trophy hunting.¹¹⁶ Particularly, the USFWS acknowledges the part trophy hunting plays in conservation efforts.¹¹⁷ The USFWS expresses further "implementing a permit requirement will give [them] the authority [they] need to work with African countries to help [these countries] improve their lion management programs."¹¹⁸ Thus, perhaps the USFWS' implementation of more stringent permit requirements reflects its attempt to maintain both sides' goals.¹¹⁹

Moreover, advocates for the addition of lions to the list of endangered and threatened species under ESA protection note that these regulations represent a last chance effort for sport hunting in Africa.¹²⁰ This last chance is predicated on the idea that hunters must now clear more rigorous standards to receive a permit to hunt lions.¹²¹ Thus, "the burden of proof [has] now shifted" and "under this new ruling, countries must not only prove that hunting is not bad for lions; they must prove that it is good for lions."¹²² Furthermore, proponents claim the hunting industry has been and is constantly given opportunities to support its claims, yet consistently fails to produce evidence.¹²³ Opponents now must provide the requisite evidence to satisfy the new regulations and protections.¹²⁴

Despite this claim, the USFWS' new permit regime is lamentably vague.¹²⁵ The addition notes, "Hunters will be able to bring sport-hunted lion trophies into the [U.S.] only if the trophies are

114. *See id.* (establishing multiple reasons for USFWS to add lions to ESA).

115. *See id.* (holding USFWS is not black and white on ideas).

116. *See id.* (noting support of trophy hunting behind more stringent regulation).

117. *See id.* (establishing vocalization of USFWS in support of trophy hunting).

118. *See* Regan, *supra* note 110 (quotation marks omitted) (quoting U.S. Fish & Wildlife Service Director, Dan Ashe) (noting aid to African countries with lion management programs).

119. *See id.* (explaining permit requirement's contributions to conservation efforts).

120. *See* Goode, *supra* note 3 (discussing "last chance" for hunters to prove hunting is beneficial for lions).

121. *See id.* (establishing more difficult hurdles in way for hunters to receive hunting permit).

122. *Id.* (discussing burden shift in response to implementation of regulation).

123. *See* Regan, *supra* note 110 (finding hunting industry notorious for failing to provide evidence in support of claims).

124. *See id.* (explaining opponents must vindicate claims to succeed).

125. *Id.* (establishing criteria to utilize trophy hunting permit).

legally obtained from countries with ‘a scientifically sound management program that benefits the subspecies in the wild’.¹²⁶ Thus, the USFWS’ plan to regulate if and how a hunt benefits a subspecies is unknown.¹²⁷ As a result, the impact on trophy hunting is uncertain.¹²⁸ What is certain, however, is that it will be much more difficult to obtain a permit for trophy hunting.¹²⁹

Furthermore, opponents claim the real issue surrounding the declining lion population numbers resides with African residents and the destruction of their surrounding locale.¹³⁰ In Africa, human and lion conflicts often result in retaliatory lion killings.¹³¹ Recently, “several Maasai herdsmen poisoned a pride of lions in Kenya after the lions killed their livestock.”¹³² Unfortunately, interactions like this, coupled with human habitat expansion, continue to threaten lions’ existence.¹³³ Beneficially, the trophy hunting industry in Africa has helped initiate and promote lion tolerance in response to issues like the one in Kenya.¹³⁴ Additionally, hunting revenue has been attributed to helping anti-poaching organizations, as well as providing incentive for residents to promote protection of lions.¹³⁵

A central organization that supports hunting, the Safari Club International Foundation (Safari International), “recognizes that saying that the lion is not currently in danger of extinction is not the same as saying that the lion does not face challenges.”¹³⁶ Thus, Safari International notes that regardless of the distinction between the sides quarreling in this issue, all players must continue to work

126. *Id.* (finding it difficult to enforce and utilize permit under new requirements).

127. *Id.* (noting uncertainty of interpreting permit regulation standards).

128. *See* Regan, *supra* note 110 (eluding to idea that outcome is also uncertain).

129. *See id.* (noting difficulty in attaining permit under new requirements).

130. *Id.* (noting African people’s purposeful killing of lions in retaliation as real issue, not hunting issue).

131. *Id.* (explaining that death of lions by retaliation as ten times more destructive to lion population numbers than trophy hunting).

132. *Id.* (establishing effect of lion human conflicts).

133. *See* Regan, *supra* note 110 (noting direct effect humans have on lion population numbers).

134. *Id.* (eluding to tolerance produced from lion hunting industry in Africa). Supporters of trophy hunting claim that “[i]n other words, trophy hunting can help make lions an asset to be protected rather than a liability to be destroyed.” *Id.*

135. *Id.* (proclaiming substantial effect of lion hunting industry on residents of Africa).

136. *See* Simpson, *supra* note 93 (recognizing role of Safari International in debate over lion conservation).

hard to address issues affecting wildlife, specifically lions.¹³⁷ One such issue and phenomenon negatively affecting lion population numbers is illegal poaching.¹³⁸ Consequently, due to the illegal nature of their activity, poachers will be unaffected by the addition of lions to the list of endangered and threatened species under the ESA.¹³⁹

Ultimately, it is problematic that numerous factors, which contribute to the depletion of lion populations, will be unaffected and further uncontested by this new regulation.¹⁴⁰ U.S. regulation cannot prevent certain issues, especially those in African countries.¹⁴¹ Furthermore, it is unlikely that legal regulation could successfully remedy the growth in human population size encroaching on lions' habitats.¹⁴² Thus, the regulation seemingly combats none of the most severe contributing factors to the decrease in lion populations.¹⁴³ Yet, the regulation controls the only aspect the U.S. government can control: American trophy hunting.¹⁴⁴

V. IMPACT: WILL LION POPULATION NUMBERS BE PRESERVED OR POTENTIALLY INCREASE?

“The lion is one of the planet’s most beloved species and an irreplaceable part of our shared global heritage. If we want to ensure that healthy lion populations continue to roam the African savannas and forests of India, it’s up to all of us – not just the people of Africa and India – to take action.”¹⁴⁵

—Service Director Dan Ashe (USFWS)

It is unclear whether the addition of lions to the list of endangered and threatened species under the ESA will truly impact the

137. *Id.* (highlighting necessity of both sides, regardless of position, to help protect wildlife).

138. *Id.* (noting poaching issue is significant in lion number decline).

139. *Id.* (finding poachers as definition of illegal activity).

140. *See* Regan, *supra* note 110 (finding trophy hunting may not be only issue affecting lion numbers).

141. *Id.* (noting lack of ability and jurisdiction for regulation to control other countries).

142. *Id.* (finding lack of ability for combatting human encroachment on animal habitats).

143. *Id.* (finding underinclusive issues with ESA addition of lions).

144. *Id.* (noting lack of jurisdiction for U.S. federal government to control actions in Africa).

145. *Lions Are Now Protected Under the Endangered Species Act*, *supra* note 91 (finding loss of lions as devastating to entire world).

overall protection of lions.¹⁴⁶ There are too many factors at play to truly predict what results, either negative or positive, the addition will yield.¹⁴⁷ Frankly, the protection of African lions enumerated in the ESA can do little to affect the factors that exacerbate the decreasing rate of lions in Africa.¹⁴⁸ Such factors include the lifestyle of inhabitants, the local government and their practices, the prominence of criminal activity in relation to animals, and the established cultures of African countries.¹⁴⁹ Despite what many Americans may think, the true people affected by the Act are inhabitants of Africa.¹⁵⁰ The daily lives of inhabitants of Africa are often impacted, at least in some way, by lions.¹⁵¹

Many African citizens, therefore, were blatantly unhappy with the dearth of attention that Cecil's death received, as there are more urgent issues facing African countries, including Zimbabwe.¹⁵² In response to the media attention, Zimbabwe citizens countered, "Lions cause terrible problems in Zimbabwe[] because they eat livestock, and have been known to attack and even kill people."¹⁵³ Furthermore, the critics "point out that Zimbabwe, an extremely poor nation, faces far more pressing problems than illegal lion hunting."¹⁵⁴ Such critics believe "the world should care more about Zimbabwe's humans than its lions."¹⁵⁵

These responses from people in the thick of the issue surrounding lions are candid.¹⁵⁶ Yet, in light of the Zimbabwe people's frustrations, it is undeniable there is a silver lining in the negatively perceived media attention of Cecil's death for every-

146. For a discussion on the impact of the addition of lions to the ESA, see *supra* notes 128-145 and accompanying text.

147. For a critical discussion on all of the factors impacting lion conservation efforts, see *supra* notes 98-145 and accompanying text.

148. For a critical discussion on all of the factors impacting lion conservation efforts, see *supra* notes 98-145 (noting factors impacting lion preservation).

149. See Regan, *supra* note 110 (noting difficulty for ESA in regulating and protecting lions in Africa due to limited jurisdiction).

150. For a discussion on the interaction between African inhabitants and African lions, see *supra* notes 128-140 and accompanying text.

151. For a discussion on the numerous factors surrounding lions that impact African people, see *supra* notes 98-145 and accompanying text.

152. See Walters, *supra* note 15 (alluding to reaction received from Africans after Cecil's death).

153. *Id.* (noting problems lions cause for Zimbabwean citizens).

154. *Id.* (holding Zimbabwe has more pressing issues than illegal lion hunting).

155. *Id.* (finding Zimbabwe citizens somewhat offended by Cecil's national attention in contrast to lack of attention to livelihoods).

156. *Id.* (finding Zimbabwe citizens' responses candid and truthful).

one.¹⁵⁷ African lions, the conservation of lions, and the issues concerning African citizens and lions have become international news.¹⁵⁸ Thus, the media brought these issues to the attention of the entire world.¹⁵⁹

Unfortunately, the international attention focused on the “horrors” accompanying and resulting from trophy hunting.¹⁶⁰ It seems many advocates of lions who support the species’ protection by adding lions to the list of endangered and threatened species under the ESA premise their reasoning on the “issue” of trophy hunting.¹⁶¹ Truthfully, it seems that trophy hunting is only a single factor in the decline of lion populations in Africa.¹⁶² Furthermore, the blame that advocates place on trophy hunting has resulted in the demonization of trophy hunting and trophy hunters.¹⁶³ It is undeniable that Palmer’s action of fatally luring Cecil from a preservation park where he was being researched for years was wrong and shameful.¹⁶⁴

Yet, critics of trophy hunting fail to recognize the synchronization between African citizens’ feelings and trophy hunting organizations’ actions.¹⁶⁵ African countries that are extremely poor and impoverished benefit financially from trophy hunting.¹⁶⁶ Thus, a significant amount of the countries encompassed in Africa rely on trophy hunting as a means of some financial stability.¹⁶⁷ Fortunately, it seems that the trophy hunting limitations imposed by the

157. For a discussion of the media attention received from Cecil’s death, see *supra* notes 49-60 and accompanying text.

158. For a discussion on the enormous national impact from media coverage of Cecil’s death, see *supra* notes 47-60 and accompanying text.

159. For a discussion of the world’s attention to lion conservation, see *supra* notes 47-60 and accompanying text.

160. For a discussion of trophy hunting in Africa, see *supra* notes 62-74 and accompanying text.

161. For a discussion of factors affecting lion population decline, see *supra* notes 98-145 and accompanying text.

162. For a discussion of the numerous factors impacting lion population decline, other than trophy hunting, see *supra* notes 127-144 and accompanying text.

163. For a discussion of the impact of blame placed on trophy hunting, see *supra* notes 127-144 and accompanying text.

164. For a discussion of the story surrounding Palmer’s killing of Cecil, see *supra* notes 51-61 and accompanying text.

165. For a discussion of critics’ argument against critics of the addition of lions to the ESA, see *supra* notes 126-145 and accompanying text.

166. For a discussion of the positive financial impact of trophy hunting on Africa, see *supra* notes 111-114 and accompanying text.

167. For a discussion on trophy hunting’s significant impact in Africa, see *supra* notes 111-114 and accompanying text.

addition of lions to the list of endangered and threatened species under the ESA somewhat recognize this financial impact.¹⁶⁸

Furthermore, the trophy hunting programs often help fund and “sustain lion conservation, research[,] and anti-poaching activities.”¹⁶⁹ Unfortunately, the USFWS adduced that “not all trophy hunting programs are scientifically based or managed in a sustainable way,” and therefore, the permit requirements were adapted to “support and strengthen the accountability of conservation programs in other nations.”¹⁷⁰ Thus, the new permit regulations attempt to maintain trophy hunting, while combating the “outlier” trophy hunting organizations.¹⁷¹

As a result of tightened permit regulations, trophy hunters will have a slightly more difficult time acquiring a permit to import their trophies.¹⁷² Such difficulty may result in a decline in trophy hunting numbers.¹⁷³ Such a decline is unlikely, however, given the enormous sums of money trophy hunters willingly spend on these excursions.¹⁷⁴ Moreover, the numbers of lions sustained in Africa will ultimately reflect the success of the addition of lions to the ESA.¹⁷⁵ The most optimistic outcome would be improving preservation parks and conservation efforts, which would increase lion populations, while also maintaining the contentment of African countries.¹⁷⁶ Hopefully, the protection now afforded to lions under the ESA, which substantially affects American trophy hunters, does not negatively impact the financial status of African countries.¹⁷⁷

168. For a discussion of some of the rationale behind the USFWS’s decision to include lions under the ESA, see *supra* notes 115-120 and accompanying text.

169. See *Lions Are Now Protected Under the Endangered Species Act*, *supra* note 91 (outlining summary of circumstances surrounding addition of lions to ESA).

170. *Id.* (clarifying permit requirement’s purpose of combatting negative trophy hunting organizations, not eliminating all trophy hunting organizations).

171. *Id.* (establishing logic behind tightened permit requirements for trophy hunters).

172. For a discussion of the new trophy hunting permit requirements, see *supra* notes 31 & 90-93 and accompanying text.

173. For a discussion on the increased difficulty in obtaining trophy hunting permits, see *supra* notes 31 & 90-93 and accompanying text.

174. For a discussion of the extravagant lengths trophy hunters go to participate in lion-hunting excursions, see *supra* notes 51-61 and accompanying text.

175. For a discussion of the current number of lions in Africa, see *supra* notes 35-44 and accompanying text.

176. For an analysis of numerous factors surrounding lions that impact African people, see *supra* notes 98-145 and accompanying text.

177. For a discussion of trophy hunting’s positive financial impact on Africa, see *supra* notes 111-114 and accompanying text.

Sadly, the impact of poaching and civilian killing of lions will increase, or at a minimum, remain stagnant, regardless of the protections afforded by the ESA.¹⁷⁸ U.S. legislation has no power to enforce prosecution of such excessive killings.¹⁷⁹ Consequently, the overall impact of the addition of lions to the list of endangered and threatened species under the ESA is unknown and difficult to calculate.¹⁸⁰ Implementing this regulation will hopefully allow for legal trophy hunting to finance anti-poaching organizations, motivate conservation efforts with the knowledge of the serious decline of lion populations, and increase lion population numbers.¹⁸¹

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178. For a discussion of the impact of poaching and civilian killing of lions, see *supra* notes 131-145 and accompanying text.

179. For a discussion of the unfortunate lack of prosecutorial power of the U.S., see *supra* notes 31 & 141-145 and accompanying text.

180. For a critical analysis of the impact the addition of lions to the ESA has on African people, see *supra* notes 98-145 and accompanying.

181. For a discussion of the efforts surrounding lion conservation, see *supra* notes 170-172 and accompanying text.

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