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CITY BAR

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Public Comments Processing  
Attn: FWS-R9-ES-2012-0025  
Division of Policies and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive  
MS 2042-PDM  
Arlington, VA 22203

RE: Docket #FWS-R9-ES-2012-0025

Dear Service Director Ashe:

The Committee on Animal Law of the New York City Bar (the “Committee”) respectfully submits this response to the request in 77 Federal Register 70,727 (November 27, 2012) for comments to the U.S. Fish and Wildlife Service (the “Service”) on the petition to list the African lion (*Panthera leo leo*) as an endangered species under the Endangered Species Act of 1973 as amended (the “Act”) and for scientific, commercial data and other information regarding this subspecies.<sup>1</sup> We urge the Secretary of the Interior (the “Secretary”) to find the African lion subspecies meets statutory criteria as an endangered species and to list the African lion as Endangered under the Act.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. §1531-§1544

<sup>2</sup> *Id.* §1533

The New York City Bar is an independent non-governmental organization of more than 23,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Committee is the first committee of its kind in the country and has a history of supporting federal, state, and local anti-cruelty legislation. When warranted, our Committee takes positions on various issues of concern on an international level, i.e. the moratorium on commercial whaling in international waters and the protection of African elephants under CITES.<sup>3 4 5</sup> The Committee has a comparable interest in the protection of the African lion population, which is currently estimated at only 32,000 wild animals.<sup>6</sup>

The Act defines “endangered species” as any species that is in danger of extinction throughout all or a significant portion of its range.<sup>7</sup> The Act sets forth the criteria to determine whether any species is an endangered species or a threatened species. A species may be determined to be an endangered or threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation, (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.<sup>8</sup>

## Recommendation

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<sup>3</sup> The Convention on the International Trade in Endangered Species of Wild Fauna and Flora, What is CITES, <http://www.cites.org/eng/disc/what.php>.

<sup>4</sup> Animal Law Committee, LETTER TO ADMINISTRATOR OF NOAA AND UNDERSECRETARY OF COMMERCE REGARDING WORLDWIDE MORATORIUM ON COMMERCIAL WHALING (2009), [http://www.nycbar.org/pdf/report/20071717Commercial\\_Whaling.pdf](http://www.nycbar.org/pdf/report/20071717Commercial_Whaling.pdf).

<sup>5</sup> Animal Law Committee, LETTER TO THE U.S. FISH AND WILDLIFE SERVICE REGARDING PROPOSED AMENDMENTS TO CITES (2012), <http://www2.nycbar.org/pdf/report/uploads/20072306CommentletterinresponsetoUSFishandWildlifesproposedCITESamendments.pdf>.

<sup>6</sup> In 2012, the IUCN estimated that 32,000 lions remain in 67 lion areas comprising 3.4 million km<sup>2</sup>, 17 per cent of historical range or about 25 per cent of Savannah Africa. The IUCN Red List of Threatened Species™ classified the African lion as Vulnerable with a declining population trend and facing a high risk of extinction in the wild (originally published in 1996 and republished in 2002, 2004, 2008), The listing is based on a suspected population reduction of at least 30 per cent over the last two decades, the causes of which are unlikely to have ceased.

The IUCN Red List of Threatened Species™ classifies the lion population in West Africa as Regionally Endangered. Estimates of 850-1,163 lions remain in West Africa, numbers well below the Endangered criterion level of 2,500. As few as 1000-2850 lions remain in West and Central Africa combined. *Panthera leo*, IUCN 2012. IUCN Red List of Threatened Species™ Version 2012.2, <http://www.iucnredlist.org/details/15951/0>.

<sup>7</sup> 16 U.S.C. §1532(6), (16)

<sup>8</sup> *Id.* §1533(a)(1)(A)-(E)

The Committee recommends that the Secretary of the Interior determines the African lion, *Panthera leo leo*, “is in danger of extinction throughout all or a significant portion of its range,” and lists the subspecies as Endangered throughout its range under the Act.<sup>9</sup> The Committee bases its recommendation on its analysis of the work done by established organizations regarding the conditions in which the African lion exists, as applied to the relevant law.

**A. The African lion should be listed as “Endangered” under the Act due to the present modification and destruction of its habitat and range.**

The Act provides that a species may be determined to be Endangered due to “the present or threatened destruction, modification or curtailment of its habitat or range.”<sup>10</sup> The African lion’s habitat faces ongoing modification and destruction and should therefore be listed as Endangered under the Act. The African lion, an apex predator (an animal, who as an adult, has no natural predators in its ecosystem), requires large amounts of space and resources.<sup>11</sup> As the human population expands in Africa into previously unsettled, wild areas and wildlife conservation areas, there is increased competition between wildlife and humans for land and prey.<sup>12 13</sup> Consequently, lion habitats are destroyed and fragmented, supplanted with settlement, agriculture and livestock farming.<sup>14</sup> Additional causes of habitat fragmentation and destruction for the African lion include drought, desertification, and land degradation due largely to human agriculture and activity such as the livestock industry, over-cultivation, intensive irrigation,

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<sup>9</sup> *Id.* §1532(6), (16)

<sup>10</sup> *Id.* §1533(a)(1)(A)

<sup>11</sup> Laura R. Prugh, Chantal J. Stoner, Clinton W. Epps, William T. Bean, William J. Ripple, Andrea S. Laliberte, Justin S. Brashares, “The Rise of the Mesopredator,” *BioScience* 59 (October 2009): 779-791, <http://fw.oregonstate.edu/pdfs/Prughetal2009Bioscience.pdf>.

<sup>12</sup> The human population of sub-Saharan Africa was 518 million in 1990, 875 million in 2011 and is expected to increase to 1.2 billion by 2025 and to 2 billion by 2050. See POPULATION: TOTAL IN SUB SAHARAN AFRICA, was last reported at 874841049 in 2011, according to a World Bank report published in 2012, <http://www.tradingeconomics.com/sub-saharan-africa/population-total-wb-data.html> (last visited on Jan. 19, 2013); Population Action International, Population, Climate Change, and Sustainable Development in Africa, <http://populationaction.org/wp-content/uploads/2012/06/PAI-AFIDEP.pdf>. (January 23, 2013).

<sup>13</sup> In 2012, the IUCN estimated that 32,000 lions remain in 67 lion areas comprising 3.4 million km<sup>2</sup>, 17 per cent of historical range or about 25 per cent of Savannah Africa. The IUCN Red List of Threatened Species™ classified the African lion as Vulnerable with a declining population trend and facing a high risk of extinction in the wild (originally published in 1996 and republished in 2002, 2004, 2008). The listing is based on a suspected population reduction of at least 30 per cent over the last two decades, the causes of which are unlikely to have ceased.

The IUCN Red List of Threatened Species™ classifies the lion population in West Africa as Regionally Endangered. Estimates of 850-1,163 lions remain in West Africa, numbers well below the Endangered criterion level of 2,500. As few as 1000-2850 lions remain in West and Central Africa combined. *Panthera leo*, IUCN 2012. IUCN Red List of Threatened Species™ Version 2012.2, <http://www.iucnredlist.org/details/15951/0>.

<sup>14</sup> IUCN SSC Cat Specialist Group (2006a). IUCN CONSERVATION STRATEGY FOR THE LION IN WEST AND CENTRAL AFRICA. Yaounde, Cameroon and IUCN, (2006b) IUCN REGIONAL CONSERVATION STRATEGY FOR THE LION *Panthera leo* in EASTERN AND SOUTHERN AFRICA, [http://www.catsg.org/catsgportal/bulletin-board/05\\_strategies/Lion%20Conserv%20Strat%20E&S%20Africa%202006.pdf](http://www.catsg.org/catsgportal/bulletin-board/05_strategies/Lion%20Conserv%20Strat%20E&S%20Africa%202006.pdf) (2006) (last visited January 25, 2013).

deforestation and road building.<sup>15 16</sup> Many experts also anticipate exacerbation of these issues due to climate change.<sup>17</sup>

**B. The African lion should be listed as “Endangered” under the Act due to overutilization of the species for commercial, recreational and scientific purposes.**

The Act provides that a species may be determined to be Endangered due to “overutilization for commercial, recreational, scientific or educational purposes.”<sup>18</sup> The African lion is overutilized for both commercial and recreational purposes, including trophy hunting and commercial trade and should therefore be listed as Endangered under the Act. Between 1999 and 2008, a total of 28,197 African lion specimens (lions, dead or alive, and their parts and derivatives), the equivalent of at least 10,902 lions, were traded internationally for all purposes.<sup>19</sup> During this decade, the United States imported 16,021 lion specimens, (57 per cent of the total), the equivalent of at least 4,759 lions (54 per cent of the total).<sup>20</sup> The U.S. imported lion specimens from twelve range States where the reported data indicate the off-take was unsustainable.<sup>21</sup> The most common purposes of this trade were scientific, recreational and commercial.<sup>22</sup> The U.S. is the primary importing country of lions and lion items as hunting trophies and for commercial purposes (52.5 per cent and 59 per cent, respectively).<sup>23</sup>

Trophy hunting, the selective hunting of large and exotic wild game, is considered a recreational sport in which items prepared from the body of a game animal killed by a hunter are kept as a souvenir by the hunter or sold or traded to other individuals for personal use in the importing country. From 1999 through 2008, a total of 9,224 lion specimens (including live

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<sup>15</sup> United Nations Environment Programme (UNEP) Global Environment Outlook GEO-4 Environment for Development, Full Report (2007), available at [http://www.unep.org/geo/GEO4/report/GEO-4\\_Report\\_Full\\_en.pdf](http://www.unep.org/geo/GEO4/report/GEO-4_Report_Full_en.pdf)

<sup>16</sup> P.F. Reich, S.T. Numbem, R.A. Almaraz, H. Eswaran, *Land Resource Stresses and Desertification in Africa* (2001), Natural Resources Conservation Service, United States Department of Agriculture, <http://soils.usda.gov/use/worldsoils/papers/desertification-africa.html> (last visited January 25, 2013)

<sup>17</sup> UN Economic Commission for Africa (UNECA), *Africa review report on drought and desertification*, Addis Ababa, Ethiopia (2008).

<sup>18</sup> 16 U.S.C. §1533(a)(1)(B)

<sup>19</sup> CITES, <http://www.cites.org/eng/resources/species.html> and <http://www.cites.org/eng/resources/quotas/index.php> (reports compiled into an electronic, searchable database by the United Nations Environment Programme, in cooperation with the World Conservation Monitoring Centre (UNEP-WCMC) (last visited January 25, 2013).

<sup>20</sup> *Id*

<sup>21</sup> IUCN, (2006 a & b), *supra*

<sup>22</sup> CITES, *supra*

<sup>23</sup> IUCN, (2006 a & b), *supra*

animals), representing at least 7,565 lions were traded internationally as hunting trophies.<sup>24</sup> The majority of the specimens were imported by the U.S..<sup>25</sup> In 2008, a total of 1,140 trophies were traded internationally as hunting trophies, more than twice the total of 518 in 1999.<sup>26</sup> The U.S. imported most of these specimens, more than any other year in that decade, and more than twice the number they imported in 1999.<sup>27</sup>

The “commercial” trade of African lion specimens is “for the purpose of sale in the importing country.”<sup>28</sup> From 1999 to 2008, a total of 3,102 lion specimens, the equivalent of at least 1,328 lions were traded internationally for commercial purposes.<sup>29</sup> 2,715 of these lion specimens, the equivalent of at least 1,043 lions, were reported as being from a wild source.<sup>30</sup> The most common lion specimens traded for these purposes were claws, trophies, skins, live animals, skulls and bodies.<sup>31</sup> The U.S. imported 1,846 lion specimens (59 per cent of the total), the equivalent of at least 401 lions (30 per cent of the total) from the grand total.<sup>32</sup> Of the wild source trade, the U.S. imported 1,700 lion specimens (63 per cent of the total), the equivalent of at least 362 lions.<sup>33</sup> The three main exporting countries for commercial purposes, Zimbabwe, South Africa and Botswana, accounted for 83.7 per cent of all specimens in such trade.<sup>34</sup>

### **C. The African lion should be listed as “Endangered” under the Act due to disease or predation.**

The Act provides that a species may be determined to be Endangered due to “disease or predation.”<sup>35</sup> The African lion suffers from disease and predation and therefore should be listed as Endangered under the Act. Disease is a rising issue threatening the African lion population. The risk of disease to the African lion is believed to be increasing because of increased

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<sup>24</sup> CITES, *supra*

<sup>25</sup> *Id*

<sup>26</sup> *Id*

<sup>27</sup> *Id*

<sup>28</sup> CITES, <http://www.cites.org/eng/cop/15/doc/E15-18A01.pdf> (last visited January 25, 2013)

<sup>29</sup> CITES, *supra*

<sup>30</sup> *Id*

<sup>31</sup> *Id*

<sup>32</sup> *Id*

<sup>33</sup> *Id*

<sup>34</sup> IUCN (2006a & b), *supra*

<sup>35</sup> 16 U.S.C. §1533(a)(1)(C).

fragmentation, whether due to loss of habitat or fencing. In addition, their increasing proximity to man and domestic animals exposes them to new diseases.<sup>36</sup> Furthermore, as explained in section B *supra*, predation by humans through trophy hunting and related commercial trade is a significant factor threatening the African lion population.

**D. The African lion should be listed as “Endangered” under the Act due to the inadequacy of existing regulatory mechanisms.**

The Act provides that a species may be determined to be Endangered due to “the inadequacy of existing regulatory mechanisms.”<sup>37</sup> Presently, the existing regulatory mechanisms are inadequate to protect the African lion from extinction and therefore the African lion should be listed as Endangered under the Act.

Although several international treaties, such as CITES, and regional agreements as well as national laws and regulations in many African range States address, directly or by inference, the conservation, management and protection of the African lion, they are inadequate to address existing threats to the survival of the African lion. CITES is an international agreement that regulates international trade in specimens of specific wildlife species to which participating countries (Members) adhere to voluntarily.<sup>38 39</sup> CITES does not replace international or national laws but rather provides a framework to be respected by the countries that join CITES, which have to adopt their own domestic legislation to ensure that CITES is implemented at the national level.<sup>40</sup>

Since 1977, the African lion, as a member of Family Felidae, has been listed under the regulated species of CITES.<sup>41 42</sup> However, CITES has never adopted any special measures, such as export quotas, to specifically address the trade of this species. As such, the import of African lion specimens by the U.S. is currently permissible if such specimens, including trophies, arrive with a valid CITES export permit from the exporting country.<sup>43</sup>

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<sup>36</sup> IUCN SSC CAT Specialist Group, (2006b), *supra*

<sup>37</sup> 16 U.S.C. §1533(a)(1)(D).

<sup>38</sup> CITES, There are now 177 Members of CITES.

<http://www.cites.org/eng/disc/how.php>.<http://www.cites.org/eng/disc/how.php>.<http://www.cites.org/eng/disc/how.php>.

<sup>39</sup> The U.S. is a Member nation of CITES

<sup>40</sup> *Id.*

<sup>41</sup> CITES, Appendices I, II and III, *supra*.

<sup>42</sup> CITES, Article II, Par. 2 of the Convention (Mar 3, 1973) <http://www.cites.org/eng/disc/text.php#II>.

<sup>43</sup> CITES, Article IV of the Convention, <http://www.cites.org/eng/disc/text.php#IV>.

The Members of CITES recognize that proper implementation of Article IV is essential for the conservation of Appendix II species.<sup>44 45</sup> However, a review of CITES annual report data indicates there are problems in reporting and standards of reporting.<sup>46 47</sup> As a result of these reporting problems, trade in African lion specimens is not accurately recorded or monitored in the manner intended by CITES, effectively allowing for the trade of specimens from unsustainable sources. For example, an analysis of trophy trade between supply and demand countries conflicts with CITES report data. This discrepancy is due to the fact that reporting practices can be done on the basis of permits used, or permits issued and not necessarily used. It is also often impossible to cross-check single trade operations.<sup>48</sup> The Act is the implementing legislation of CITES for the U.S.<sup>49</sup> Without listing the African lion as Endangered, there is no requirement under Federal law or CITES that the U.S. examine the basis on which a permit was granted or otherwise ensure that the import would provide a conservation benefit to the African lion.

**E. The African lion should be listed as “Endangered” under the Act due to other natural or manmade factors affecting the species’ continued existence.**

The Act provides that a species may be determined to be Endangered due to “other natural or manmade factors affecting its continued existence.”<sup>50</sup> The problem of retaliatory killing of African lions is an additional factor that detrimentally affects the continued existence of the African lion and which weighs in favor of listing the African lion as Endangered under the Act.

As the human population expands in Africa, there is increased competition between wildlife and humans for land and prey. A major threat in this competition is indiscriminate killing of lions (retaliatory or pre-emptive killing to protect life and livestock) by shooting or

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<sup>44</sup> CITES, Article IV of the Convention, <http://www.cites.org/eng/disc/text.php#IV>.

<sup>45</sup> CITES, Resolution Conference 12.8 (Rev. CoP13).

<sup>46</sup> CITES (1992a), Eight Meeting of the Conference of the Parties (CoP8) Kyoto (Japan), 2-13 March 1992 Interpretation and implementation of the Convention, Significant Trade in Appendix-II species, animals, Doc. 8.30 (revisited January 25, 2013).

<sup>47</sup> CITES Standing Committee, Interpretation and implementation of the Convention, compliance and enforcement issues, national laws or implementation of the Convention. SC 59, Doc. 11, Doha (Qatar), 12 March 2010, <http://www.cites.org/eng/com/sc/59/index.shtml>

<sup>48</sup> *Id.*, online report, p.11

<sup>49</sup> 16 U.S.C. §1531 (a)(4)(F).

<sup>50</sup> *Id.* §1533(a)(1)(E).

poison.<sup>51</sup> Lions are scavengers and so are especially vulnerable to poison that can kill off an entire pride.<sup>52</sup>

For the foregoing reasons, we urge the Secretary to find that the African lion subspecies meets statutory criteria as an endangered species and to list the African lion as Endangered under the Act.

Yours truly,

A handwritten signature in black ink, appearing to read 'CMott', written in a cursive style.

Christine Mott

Chair, Committee on Animal Law

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<sup>51</sup> IUCN Red List (2012).

<sup>52</sup> *Id.*