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U.S. Fish and Wildlife Service
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Falls Church, VA 22041-3803

RE: Docket # FWS-R9-ES-2012-0025; 450 003 0115

Dear Service Director Ashe:

The Committee on Animal Law of the New York City Bar Association respectfully submits this response to the request for comments set forth by the U.S. Fish and Wildlife Service (“USFWS”) in 79 Federal Register No. 209/Proposed Rules, pp.64472-64502 (October 29, 2014) regarding a petition to list the subspecies African lion (*Panthera leo leo*) as threatened under the Endangered Species Act of 1973 as amended (the “Act”).¹

The New York City Bar Association is an independent non-governmental organization of more than 24,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Animal Law Committee is the first committee of its kind in the country and has a history of supporting federal, state, and local anti-cruelty legislation. Our Committee has taken positions on various issues of concern involving the Endangered Species Act of 1973.²

BACKGROUND

The African lion (*Panthera leo leo*) is currently not listed as either “endangered” or “threatened” under the Act. In November 2012, USFWS requested comments on the petition to list the subspecies African lion (*Panthera leo leo*) as “endangered” under the Act. In the most recent October 2014 Proposed Rules, USFWS proposed listing the subspecies *Panthera leo leo* as “threatened” and also proposed a rule under section 4(d) of the Act to provide for conservation measures for the subspecies.

¹ 16 U.S.C. §1531-§1544.

² See January 28, 2013 Letter to the U.S. Fish and Wildlife Service urging listing the African Lion as endangered under the Endangered Species Act of 1973 as amended, <http://www2.nycbar.org/pdf/report/uploads/20072384-CommentsreAfricanLionasEndangeredSpecies.pdf>.

Under the Act, “endangered species,” means any species which is in danger of extinction throughout all or a significant portion of its range.³ The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.⁴ A species may be determined to be endangered or threatened for any of these factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence.⁵

RECOMMENDATION

The Committee supports the listing of the African Lion as a protected species under the Act and implementation of conservation measures for the subspecies under Section 4(d) of the Act.⁶ However, we believe that a designation of “endangered,” and not merely “threatened,” is warranted for this subspecies. Accordingly, we recommend 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.⁷ 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, which demonstrates that *Panthera leo leo* satisfies the criteria for designation as “endangered” under the Act. In particular, we note that *Panthera leo leo*’s population continues to decline at a significant rate, which has caused experts, including USFWS, to determine that aggressive measures are needed to prevent this subspecies from becoming extinct by 2050.^{8 9}

JUSTIFICATION

³ 16 U.S.C. §1532(6), (16).

⁴ *Id.* §1532(20).

⁵ *Id.* §1533(a)(1)(A)-(E).

⁶ We note that the proposal by USFWS to add a Section 4(d) special rule to require prior authorization or permits for the importation of all African lion specimens under the Act would be superfluous in the event that the subspecies were listed as “endangered” because such protections would automatically inure to the subspecies with such a designation.

⁷ *Id.* §1532(6), (16).

⁸ Service Director Dan Ashe, *The Lion Needs Our Help*, U.S. Fish and Wildlife Service, Director’s Corner, Meet Service Director Dan Ashe, <http://www.fws.gov/director/dan-ashe/index.cfm/2014/10/27/The-African-Lion-Needs-Our-Help> (noting that lions are “suffering alarming declines” and that “[u]nless aggressive measures are taken to protect lions, their prey and habitat, the lion will likely face the threat of extinction within that time frame,” i.e. by 2050).

⁹ In 2012 the International Union for Conservation of Nature (“IUCN”) estimated that about 32,000 lions remain in 67 lion areas comprising 3.4 million km², 17 per cent of historical range or 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> (all citations herein last visited January 21, 2015).

A. The African lion should be listed as “endangered” under the Act due to present destruction and modification 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.”¹⁰ The African lion’s habitat faces ongoing modification and destruction and the subspecies should therefore be listed as “endangered” under the Act. The African lion is the largest carnivore in Africa, a primary predatory that as an adult has no natural predators in its ecosystem and requires large amounts of space and resources.¹¹ Its range continues to be severely curtailed and its habitat faces ongoing modification and destruction. As the human populations in Africa exponentially expand into previously unsettled wild areas and wildlife conservation areas so too does the competition between wildlife and humans for land and prey.^{12 13} Lion habitats are destroyed and fragmented, supplanted by settlement, agriculture, livestock farming, intensive irrigation, deforestation and road building.^{14 15} Experts also anticipate exacerbation of these issues due to climate change.¹⁶

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.”¹⁷ 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. The U.S. is the primary importing country of lion and lion items as hunting trophies and for commercial purposes.¹⁸ Between 1999 and 2008, the United States imported 16,021 (57 per cent of the total) African lion specimens (lions, dead or alive and their parts and derivatives, i.e. claws, trophies,

¹⁰ *Id.* §1533(a)(1)(A)

¹¹ 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 Mesopredators,” *Bioscience* 59 (October 2009): 779-791 <http://bioscience.oxfordjournals.org/content/59/9/779.full>.

¹² The total human population of sub-Saharan Africa (developing only) was 960.1 million in 2014 according to a World Bank report and is expected to increase to 1.2 billion by 2025 and to 2 billion by 2050 <http://data.worldbank.org/region/sub-saharan-africa>; See POPULATION: TOTAL IN SUB SAHARAN AFRICA, was last reported at 874841049 in 2011 <http://www.tradingeconomics.com/sub-saharan-africa/population-total-wb-data.html>; Population Action International, Population, Climate Change, and Sustainable Development in Africa, <http://populationaction.org/wp-content/uploads/2012/09/Sustainable-Development-in-Africa.pdf>.

¹³ 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 (2006), http://www.catsg.org/catgportal/bulletin-board/05_strategies/Lion%20Conserv%20Strat%20E&S%20Africa%202006.pdf.

¹⁴ United Nations Environment Programme (UNEP) Global Environment Outlook GEO-4 Environment for Development, Full Report (2007), <http://www.unep.org/geo/geo4.asp>.

¹⁵ 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://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/use/?cid=nrcs142p2_054025.

¹⁶ UN Economic Commission for Africa (UNECA), *Africa review report on drought and desertification*, Addis Ababa, Ethiopia (2008).

¹⁷ 16 U.S.C. §1533(a)(1)(B).

¹⁸ IUCN, (2006a & b), *supra*.

skins, skulls, bodies), the equivalent of at least 4,759 lions.¹⁹ The U.S. imported lion specimens from twelve range States where the reported data indicate the off-take was unsustainable.²⁰ The most common purposes of this trade were scientific, recreational and commercial.²¹

Trophy (sport) hunting, the selective hunting of large and exotic wild game, is considered a recreational sport. Items prepared from the body of a game animal killed by a hunter are kept as a souvenir or sold or traded to other individuals for personal use in the importing country. U.S. hunters make up a disproportionately large share of foreign hunters who book trophy hunts in Africa.²² From 1999 through 2008, 9,224 lion specimens (including live animals), representing at least 7,565 lions were traded internationally as hunting trophies, the majority of which were imported by the U.S.²³ In 2008, 1,140 trophies were traded internationally as hunting trophies, more than twice the total of 518 in 1999.²⁴ The U.S. imported most of these specimens, more than twice the number they imported in 1999.²⁵

The “commercial” trade of African lion specimens is “for the purpose of sale in the importing country.”²⁶ From 1999 to 2008, 3,102 lion specimens, the equivalent of at least 1,328 lions were traded internationally for commercial purposes.²⁷ 2,715 of these lion specimens, the equivalent of at least 1,043 lions, were reported as being from a wild source.²⁸ 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).²⁹ 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.³⁰ 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.³¹

In 2013, the CITES Trade Data report shows the U.S. allowed the direct import of 7 live African lions from South Africa, 627 lion trophies from eight African countries and 985 lion specimens including bones, claws, carvings, hair, skins and skulls.³² In 2012, the CITES trade data report shows the U.S. allowed the direct import of 7 live African lions from South Africa

¹⁹ 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)).

²⁰ IUCN, (2006 a & b), *supra*.

²¹ CITES, *supra*.

²² U.S. Fish and Wildlife Service, Director’s Corner.

²³ CITES, *supra*.

²⁴ *Id.*

²⁵ *Id.*

²⁶ CITES, <http://www.cites.org/eng/cop/15/doc/E15-18A01.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ IUCN (2006a & b), *supra*.

³² CITES Trade Statistics 2013 Gross Exports Report to U.S. Taxon *Panthera leo*, http://trade.cites.org/en/cites_trade/.

African, lion trophies from eight African countries totaling 662 trophies, and 1,114 lion specimens, including tails, teeth, skins, bodies, bones and claws.³³

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.”³⁴ 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 is believed to be increasing because of increased fragmentation, whether due to loss of habitat or fencing. In addition, increased proximity to humans and domestic animals exposes the lions to new diseases.³⁵ 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 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.”³⁶ 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. Member countries of CITES voluntarily adhere to international trade regulations in specimens of specific wildlife species.³⁷ CITES is an international agreement that provides a framework to be respected by the countries that join CITES, and which must adopt their own domestic legislation to ensure that CITES is implemented at the national level.³⁸

Since 1977, the African lion, as a member of Family Felidae, has been listed under the regulated species of CITES.^{39 40} 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.⁴¹ In addition, a review of CITES annual report data indicates problems in reporting and standards of reporting.^{42 43} As a result,

³³ CITES Trade Statistics Derived from the CITES Trade Database, UNEP World Conservation Monitoring Centre, Cambridge, UK, 2012 Gross Exports Report to U.S. Taxon *Panthera leo* <http://trade.cites.org/>.

³⁴ 16 U.S.C. §1533(a)(1)(C).

³⁵ IUCN SSC CAT Specialist Group, (2006b), *supra*.

³⁶ 16 U.S.C. §1533(a)(1)(D).

³⁷ CITES, There are now 180 Members of CITES, including the U.S., <http://www.cites.org/eng/disc/parties/chronolo.php>.

³⁸ *Id.*

³⁹ CITES, How CITES works, <http://www.cites.org/eng/disc/how.php>.

⁴⁰ CITES, Article II, Par. 2 of the Convention (Mar 3, 1973) <http://www.cites.org/eng/disc/text.php#II>.

⁴¹ CITES, Article IV of the Convention, <http://www.cites.org/eng/disc/text.php#IV>.

⁴² 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.

trade in African lion specimens are not accurately recorded or monitored, effectively allowing for the trade of specimens from unsustainable resources. It is often impossible to cross check single trade operations.⁴⁴ The Endangered Species Act is the implementing legislation of CITES for the U.S.⁴⁵

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.”⁴⁶ 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 is indiscriminate killing of lions by shooting or poison.⁴⁷ Lions are scavengers and so are especially vulnerable to poison that can kill off an entire pride.⁴⁸

CONCLUSION

For the foregoing reasons, we urge the Secretary to recognize that the African lion subspecies meets statutory criteria as an “endangered species” and to list *Panthera leo leo* as “endangered” under the Act.

Sincerely,



Christine Mott
Chair, Committee on Animal Law

⁴³ 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>.

⁴⁴ *Id.*

⁴⁵ 16 U.S.C. §1531 (a)(4)(F).

⁴⁶ *Id.* §1533(a)(1)(E).

⁴⁷ IUCN Red List (2012).

⁴⁸ *Id.*