

# In Memory of Cecil the Lion: An Analysis of Trophy Hunting, CITES and the Way Forward

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## Abstract

*The aim of this article is to provide a comprehensive analysis of the debate on trophy hunting. This is a particularly timely discussion given the United Kingdom's reneging on the Animals Abroad Bill, which would have implemented the toughest trophy hunting import ban globally.*

*This article shall first provide a literature review analysing the main argument put forward by scholars writing on the topic of trophy hunting, namely that trophy hunting is essential to conservation success. It shall look at the role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") as the agreement that regulates the international trade in trophies taken from endangered species, as well as its limitations. Finally, this article shall look at how trophy hunting may be phased out over a period of time, viewing state import bans on hunting trophies as a short to medium term goal, before eventually introducing a global prohibition on the practice in the longer term.*

*This article shall conclude that trophy hunting is an affront to our sense of morality. As such, it should be consigned to history as a relic of the past. Trophy hunting has no place in today's society given the current man-made biodiversity crisis, as well as science's increasing understanding of the sentience of animals. As such, killing endangered species for pleasure under the guise of conservation is entirely inappropriate, unethical, and must be brought to an end.*

## Introduction

In the Department of Environment, Food and Rural Affairs' recent publication entitled, "Our

Action Plan for Animal Welfare," George Eustice MP declared that the United Kingdom is a "nation of animal lovers."<sup>1</sup> This reflects the fact that the UK is seen as a frontrunner in establishing a legal system that upholds high standards of animal welfare. In recent years the Government has committed itself to supporting animal welfare overseas with the Animals Abroad Bill (the "Bill").<sup>2</sup> This Bill set out to introduce bans on fur and foie gras, to end the advertisement of low welfare tourism activities, and, centrally to this article, to ban the import of hunting trophies.<sup>3</sup>

Trophy hunting is a form of recreational hunting whereby the hunter keeps the taxidermied animal, or part of the animal (e.g., head, horns, skull, skin, tusks), as a representation of the successful hunt and displays it as a trophy.<sup>4</sup> However, since the killing of the famous African lion, Cecil, by a trophy hunter from the USA caused global outrage, there has been increasing negative publicity and opposition to the practice. For example, France and Australia banned the import and export of lion hunting trophies in 2015, just months after the killing of Cecil, and the Netherlands banned trophy imports of over 200 species in 2016.<sup>5</sup>

In the UK, the Conservative Party's 2019 election manifesto set out in clear terms that the

1 Department for Environment, Food and Rural Affairs, Our Action Plan For Animal Welfare (12 May 2021).

2 Animals Abroad Bill.

3 Born Free, "Does Government Reneging on Animals Abroad Bill Risk Perpetrating Animal Suffering and Undermine Conservation" (10 May 2022) <<https://www.bornfree.org.uk/news/queens-speech-response>> (Accessed 4 July 2022).

4 IUCN, "IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives" (2012) <<https://portals.iucn.org/library/node/29197>> (Accessed 5 July 2022).

5 J. Manning, "UK Announces Ban on Trophy Hunting Imports" (National Geographic, 10 December 2021) <<https://www.nationalgeographic.co.uk/environment-and-conservation/2021/12/uk-announces-ban-on-trophy-hunting-imports>> (Accessed 5 July 2021).

party would bring about a ban on imports from trophy hunting of endangered animals on the basis that high standards of animal welfare are one of the hallmarks of a "civilised" society.<sup>6</sup> The Bill was advocated for by the All-Party Parliamentary Group on Banning Trophy Hunting ("APPG"), of which the late Sir David Amess was a member, and its introduction was applauded by wildlife conservationists, such as Jane Goodall and David Attenborough, a mass of NGOs, such as Born Free, and the wider public.<sup>7</sup>

However, in a move that shocked advocates of the Bill, the Queen's Speech of May 2022 excluded any reference to the long-promised Animals Abroad Bill. Media reports indicated that two senior Conservative politicians, namely Jacob Rees-Mogg MP and Mark Spencer MP, were responsible for blocking the legislation that would have banned trophy hunting imports on the ground that such a ban would be "un-Conservative."<sup>8</sup> Despite the fact that 86% of the general population and 92% of Conservative voters support the ban, calls for an explanation from the Government as to why it abandoned its promises have gone unanswered.<sup>9</sup>

Trophies entering the UK have risen sharply in recent years despite continued public anger against the practice. According to a report published by the APPG, since 2010 ten times as many trophies have entered the UK than in the 1980s.<sup>10</sup> The total number of trophies imported into the UK since the 1980s is estimated to be 25000, with 5000 of those taken

from endangered species.<sup>11</sup> In 2019 alone, UK hunters brought back the tusks and bones of 15 African elephants; the skins and skulls of 34 baboons; 27 trophies from hippos, including teeth and tusks; as well as 12 leopard and 12 lion trophies.<sup>12</sup> By far the most popular species targeted by British trophy hunters is the African elephant. Since the 1980s, 1000 elephant trophies have been imported into the UK.<sup>13</sup>

However, UK trophy hunters are not alone in their exploits. Globally, it is estimated that as many as 1.7 million hunting trophies have been traded between 2004 and 2014.<sup>14</sup> Not surprisingly, the USA is the largest importer of hunting trophies, importing 700,000 trophies between 2016 and 2020 according to data from the US Fish and Wildlife Service.<sup>15</sup> The European Union is the second largest importer of trophies with Spain, Denmark and Germany accounting for 52% of all imported trophies.<sup>16</sup> Comparatively, the USA accounts for 71% of the import demand, or about 15 times more than the next highest nation.<sup>17</sup>

This article shall argue that trophy hunting is an affront to our sense of morality. As such, it should be consigned to history as a relic of the past. It shall first provide a literature review analysing the main argument put forward by scholars writing on the topic of trophy hunting, namely that trophy hunting is essential to conservation success. Secondly, it shall look at the role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") as the agreement that regulates the international trade in trophies taken from endangered species, as well as its limitations.<sup>18</sup> Finally, this article shall look at

6 Conservatives, "The Conservative Party Manifesto 2019" (2019) <<https://www.conservatives.com/our-plan/conservative-party-manifesto-2019>> (Accessed 5 July 2022) 54.

7 All-Party Parliamentary Group on Banning Trophy Hunting, "Trophy Hunting and Britain: The Case for a Ban" (2022).

8 J. Dalton, "Jacob Rees-Mogg refuses to debate why he 'blocked' bill that would have spared elephants from torture" (Independent, 10 June 2022) <<https://www.independent.co.uk/news/uk/home-news/rees-mogg-bill-mark-spencer-elephants-ban-b2098382.html>> (Accessed 4 July 2022).

9 B. Webster, "Tories put trophy import ban on hold and risk alienating voters" (The Times, 14 March 2022) <<https://www.thetimes.co.uk/article/tories-put-trophies-import-ban-on-hold-and-risk-alienating-voters-nwvslkx08>> (Accessed 5 July 2022).

10 All-Party Parliamentary Group on Banning Trophy Hunting, "Shooting up: Are Britain's Hunting Trophy Imports and Companies Booming?" (2022) 1.

11 Ibid.

12 Manning (n 5).

13 "Shooting Up" (n 13).

14 International Fund for Animal Welfare, "Killing for Trophies: An Analysis of the Global Trophy Hunting Trade" (2016) 21.

15 T. Sanerib, "New Wildlife Data Reveals Disturbing U.S. Trophy Trade Trends" (Press Release, 14 March 2022, Center for Biological Biodiversity) <<https://biologicaldiversity.org/w/news/press-releases/new-wildlife-data-reveals-disturbing-us-trophy-trade-trends-2022-03-14/>> (Accessed 11 July 2022).

16 Humane Society International, "Trophy hunting by the Numbers: The EU's Role in Global Trophy Hunting" (2021) 7.

17 International Fund for Animal Welfare, "Killing for Trophies: An Analysis of the Global Trophy Hunting Trade" (2016) 21.

18 The Convention on International Trade in Endan-





how trophy hunting may be phased out over a period of time, viewing state import bans on hunting trophies as a short to medium term goal, before eventually introducing a global prohibition on the practice in the longer term.

## Literature Review: The Conservation Argument

Many authors who advocate for trophy hunting pin their argument on consequentialism by suggesting that the debate “hinges on whether trophy hunting supports or impedes conservation agendas.”<sup>19</sup> This is a utilitarian view, which is rooted in the philosophy of Jeremy Bentham, whereby every action is assessed against its outcome.<sup>20</sup> It acknowledges trophy hunting as part of the international wildlife conservation regime, with its biodiversity gains outweighing the loss of individual animals.<sup>21</sup>

gered Species of Wild Fauna and Flora 1973.

<sup>19</sup> Ibid. 2.

<sup>20</sup> P. King, *One Hundred Philosophers: A Guide to the World's Greatest Thinkers* (Apple: Hove, 2004).

<sup>21</sup> D. Macdonald, et al., “Conservation or the Moral High Ground: Siding with Bentham or Kant” (2016) *Conservation Letters* 1.

Today, the distribution of critically endangered species is such that most are located in developing countries.<sup>22</sup> However, in these countries, which are characterised by a lack of resources and abject poverty, financial resources for conservation are limited.<sup>23</sup> Land is also a scarce resource, yet most conventional conservation strategies, such as establishing protected zones for wildlife in national parks, are land intensive.<sup>24</sup> This causes a struggle between the need for conservation and the need to ensure that local people have adequate access to resources to sustain their livelihoods.<sup>25</sup> This is exacerbated by the fact that animals living in national parks or sanctuaries drift into human settlements and often destroy crops or kill livestock, which can “prompt, pressure, permit, and provoke” individuals to engage in both retaliatory killings and poaching of wild-

<sup>22</sup> A.Vora, “Legal and Ethical Implications of Using Trophy Hunting as a Conservation Tool” (2018) 21 *Journal of Wildlife Law and Policy* 46, 47.

<sup>23</sup> E. Di Minin, et al., “Banning Trophy Hunting Will Exacerbate Biodiversity Loss” (2016) 31 *Trends in Ecology and Evolution* 99, 100.

<sup>24</sup> Vora (n 22) 47.

<sup>25</sup> Ibid.

life.<sup>26</sup>

In these situations of human-wildlife conflict, human behaviour is regulated by the economic concept of opportunity cost; this means the cost of the opportunity forgone.<sup>27</sup> As such, locals choose to protect their economic interests at the cost of wildlife. However, trophy hunting attaches economic value to wildlife, which incentivises locals to protect it. After all, "if it pays, it stays," the saying goes.<sup>28</sup> As such, trophy hunting excursions are increasingly recognised for the benefits they can provide to local economies.<sup>29</sup>

A good example can be seen in the Torghar Hills of Pakistan, where trophy hunting conservancies have been established to allow the regulated hunting of the CITES Appendix I-listed markhor.<sup>30</sup> Here, trophy hunting quotas are conservative with only 1-2 markhor allowed to be hunted each year.<sup>31</sup> The aim of this initiative was to provide economic incentives for communities to conserve wildlife and contribute to community development.<sup>32</sup> The revenue generated from each markhor hunt is shared at a ratio of 80:20 between the community and the government, resulting in a total of \$2,712,800 for the community and \$486,400 for the provincial government since 1986.<sup>33</sup> This revenue pays the salaries of over 80 game guards, and has funded construction of water tanks, dams and irrigation channels, a medical camp and emergency drought relief, veterinary training, and so on.<sup>34</sup> As a result, the population of markhors has increased to

around 3500 in 2012, compared to just over 100 in 1985.<sup>35</sup>

Empirical studies have shown that less developed countries gain considerable revenue from trophy hunting, the profits of which are utilised to support local conservation efforts and to incentivise local people to protect wildlife.<sup>36</sup> Take South Africa as an example. Every year, thousands of tourists, primarily from Europe and the USA, travel to South Africa to partake in trophy hunting.<sup>37</sup> South Africa is Africa's largest exporter of hunting trophies, and the second largest exporter globally of CITES-listed species.<sup>38</sup> On average, trophy hunters spend US\$250 million each year in the country, which helps to support more than 17,000 employment opportunities, with the impact of this spending on production in the economy estimated at \$341 million.<sup>39</sup>

Such large sums of money are partially generated by the expense of purchasing a permit to hunt an animal. Examples of the cost of high-profile hunts reported in the media include: \$54k to kill Cecil the Lion,<sup>40</sup> \$62k to kill a well-known large-tusked elephant,<sup>41</sup> and \$35k for the right to legally shoot a critically endangered black rhino sold by a Dallas Safari Club auction.<sup>42</sup> In addition, trophy hunters

26 W. Moreto, "Provoked Poachers? Applying a Situational Precipitator Framework Nexus to Examine the Nexus Between Human Wildlife Conflict, Retaliatory Killings, and Poaching" (2019) 32 *A Critical Journal of Crime, Law and Society* 63.

27 D. Henderson, "Opportunity Cost" (The Concise Encyclopaedia of Economics) <<https://www.econlib.org/library/Enc1/OpportunityCost.html>> (Accessed 25 July 2022).

28 T. Anderson, "If It Pays, It Stays: Trophy Hunting and Rhino Conservation (Property and Environment Research Centre, January 27 2014) <<https://www.perc.org/2014/01/27/if-it-pays-it-stays-trophy-hunting-and-rhino-conservation/>> (Accessed 29 July 2022).

29 Ibid.

30 CITES, "Markhor" (CITES, 12 January 2021) <<https://cites.org/eng/gallery/species/mammal/markhor.html>> (Accessed 27 July 2022).

31 Ibid.

32 D. Mallon, "Trophy Hunting of CITES-Listed Species in Central Asia" (TRAFFIC, 2013) EUCITES Capacity Building Project No. S415, 19.

33 Ibid.

34 Ibid.

35 M. Frisina, S. Tareen, "Exploitation prevents extinction: Case study of endangered Himalayan sheep and goats" in B. Dickson, et al. (eds.), *Recreational Hunting, Conservation and Rural Livelihoods: Science and Practice* (WileyBlackwell, UK, 2009) 141-156.

36 M. Saayman, "The Economic Impact of Trophy Hunting in the South African Wildlife Industry" (2018) 16 *Global Ecology and Conservation* 1.

37 Ibid.

38 Humane Society International, "South African government increases trophy hunting quotas, sacrificing vulnerable leopard, endangered elephant and critically endangered black rhino "as conservation tool(s)" (HSI, 28 February 2022) <<https://www.hsi.org/news-media/south-african-government-increases-trophy-hunting-quotas/>> (Accessed 26 July 2022).

39 Saayman (n 36).

40 K. Rogers, "American Hunters Killed Cecil, Beloved Lion Who Was Lured Out of His Sanctuary" (The New York Times, 28 July 2015) <<https://www.nytimes.com/2015/07/29/world/africa/american-hunter-is-accused-of-killing-cecil-a-beloved-lion-in-zimbabwe.html>> (Accessed 27 July 2022).

41 P. Thornycroft, A. Lang, "Biggest Elephant Killed in Africa For Almost 30 Years Brings Back Memories of Cecil the Lion" (The Telegraph, 15 October 2015) <<https://www.telegraph.co.uk/news/worldnews/africaandindianocean/zimbabwe/11934535/Huge-tusked-African-elephant-killed-by-german-hunter-in-Zimbabwe.html>> (Accessed 27 July 2022).

42 E. Lavandera, "Texas Hunter Bags Rhino on Con-



spend money on accommodation, clothing, taxidermy, food and drink, as well as hunting equipment, such as guns and ammunition etc.<sup>43</sup>

These funds can help maintain national parks and sanctuaries, given that they are capital intensive and require considerable funding.<sup>44</sup> For example, ninety percent of Africa's protected areas lack critical funding for lions.<sup>45</sup> Indeed, the financial deficits facing Africa's protected areas are "staggering and urgent" with wildlife management authorities requiring approximately \$1.2 to \$2.4 billion to secure adequate protection for lions alone.<sup>46</sup> Consequently, trophy hunting offers an alternative way to fund conservation projects whilst also putting money into local communities.<sup>47</sup>

However, it is important to note that the argument that trophy hunting contributes to conservation in valuable ways is disputed as the argument has largely been advanced and accepted without compelling empirical support.<sup>48</sup> A recent study found that rigorous impact evaluations that establish causal links between specific conservation practices, such as trophy hunting, and observed conservation outcomes are challenging and rare due to the number of variable factors at play.<sup>49</sup> Indeed, the studies that do exist are often disputed. In one such study commissioned by Safari Club International, it was stated that the overall economic benefit of trophy hunting in eight African countries (Botswana, Ethiopia, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe) is estimated at \$426 million per year, with the industry directly and indirectly supporting 53,000 jobs.<sup>50</sup> However,

troverfial Namibia Hunt" (CNN, 21 May 2015) <<https://edition.cnn.com/2015/05/19/africa/namibia-rhino-hunt/index.html>> (Accessed 27 July 2022).

43 Saayman (n 36).

44 Vora (n 22) 48.

45 Ibid.

46 P. Lindsey, et al., "More than \$1 Billion Needed Annually to Secure Africa's Protected Areas with Lions" (2018) Proceedings of the National Academy of Sciences 1.

47 Vora (n 22) 48.

48 C. Batavia, et al., "The Elephant (Head) in the Room: A Critical Look at Trophy Hunting" (2018) Conservation Letters 1, 3.

49 K. Baylis, et al., "Mainstreaming Impact Evaluation in Nature Conservation" (2016) 9 Conservation Letters 58-64.

50 Southwick Associates, "The Economic Contributions of Hunting Related Tourism in Eastern and Southern Africa for Safari Club International" (2015) <<https://safari-clubfoundation.org/wp-content/uploads/2020/06/South->

another study into the industry found that trophy hunting contributes significantly less to these countries' economies, job markets, and conservation.<sup>51</sup> It found that economic benefits have been heavily overstated; instead of the economic benefit of trophy hunting sitting at \$426 million, a more realistic estimate is less than \$132 million per year.<sup>52</sup> This study also found that trophy hunting supports approximately 7,500-15,500 jobs, not 53,000.<sup>53</sup>

Further, some authors contend that the benefits accrued by local communities from trophy hunting are exaggerated or non-existent. According to a study by the University of Oxford, only about 3-5% of hunting revenues trickle down to on-the-ground projects such as school construction, education, or other community initiatives.<sup>54</sup> Whilst there are examples of community-based hunting programmes in areas that are not suitable for tourism, which do provide meaningful funding for communities and lead to the recovery of a targeted species, "this is by no means the norm."<sup>55</sup>

Many countries in Africa allow trophy hunting with varying degrees of transparency, control, and, in many cases, corruption.<sup>56</sup> While it varies from state to state, corruption frequently prevents funds generated from trophy hunting going to conservation efforts, which means that trophy hunting "has not produced the advertised and desired results."<sup>57</sup> Additionally,

wick-Associates-2015\_FINAL.pdf> (Accessed 29 July 2022).

51 Economists at Large, "The Lion's Share? On the Economic Benefits of Trophy Hunting" (2017) <<https://www.hsi.org/wp-content/uploads/assets/pdfs/economists-at-large-trophy-hunting.pdf>> (Accessed 27 July 2022)

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52 Ibid.

53 Ibid.

54 M. Dellinger, "Trophy Hunting - A Relic of the Past" (2019) 34 J Envtl L & Litig 25, 27.

42.

55 S. Epsley, "Why Trophy Hunting Hurts Conservation" (Africa Geographic, 2015) <<http://magazine.africageographic.com/weekly/hunting-canned-hunting-trophy-hunting-debate/>> (Accessed 27 July 2022).

56 V. Felbab-Brown, "On the Vices and Virtues of Trophy Hunting" (Brookings Blog, 27 November 2017) <<https://www.brookings.edu/blog/order-from-chaos/2017/11/27/on-the-vices-and-virtues-of-trophy-hunting/>> (Accessed 27 July 2022).

57 Democratic Staff of the House Committee on Natural Resources, "Missing the Mark: African Trophy Hunting Fails to Show Consistent Conservation Benefits" (13 June 2016, Conservation Action) <<https://conservationaction.co.za/resources/reports/missing-the-mark-african-trophy-hunting-fails-to-show-consistent-conservation-benefits/>> (Accessed 10 September 2022).

oversight of the governance of trophy hunting operations is frequently insufficient and as a result, trophy hunting schemes are “largely exhausted” and limited to only serving “individual interests, but not those of conservation, governments or local communities.”<sup>58</sup> Indeed, Zimbabwe and Zambia have struggled with corruption in trophy hunting, which prompted the USA to impose a temporary trophy hunting import on the import of elephant trophies from these two states in 2017.<sup>59</sup>

## The International Legal Framework

Trophy hunting is often incorrectly conflated with poaching as part of the organised international illegal wildlife trade, which is currently devastating populations of African elephants and white rhinos.<sup>60</sup> Unlike poaching, international law does not prohibit trophy hunting. In fact, the first international wildlife treaties were drafted with trophy hunting expressly in mind.<sup>61</sup> Early wildlife conventions were aimed at maintaining a healthy supply of species that were considered “useful” or rare, and even put in place protections in order to maintain populations of game for trophy hunters and ivory and skin traders.<sup>62</sup>

Today, trophy hunting is regulated by CITES, which shall be the focus of this chapter. CITES is one of the older and more active of the many multilateral environmental agreements (“MEAs”) that have been introduced in recent decades.<sup>63</sup> Although CITES was not designed to regulate trophy hunting as such, it has an indirect influence on the practice as it regulates the international trade in endangered species, which includes trophies from such species.<sup>64</sup>

58 IUCN, “Big Game Hunting in West Africa” (2009) <<https://portals.iucn.org/library/efiles/documents/2009-074-En.pdf>> (Accessed 10 September 2022) 10.

59 Ibid.

60 IUCN, Informing Decisions on Trophy Hunting: A Briefing Paper for European Union Decision-makers Regarding Potential Plans for Restriction of Imports of Hunting Trophies (Briefing Paper, 2016) 4.

61 E. Hellinx, J. Wouters, “An International Lawyer’s Field Guide to Trophy Hunting” (2020) 23 *Journal of International Wildlife Law and Policy* 1, 5.

62 Ibid.

63 R. Reeve, “Policing International Trade in Endangered Species: The CITES Treaty and Compliance” (Earthscan Publications, 2002).

64 Y. Prisner-Levyne, “Trophy Hunting, Canned Hunting, Tiger Farming and the Questionable Relevance of the Conservation Narrative Grounding International Wildlife Law” (2020) 22 *Journal of International Wildlife Law and Policy* 239.

## CITES

CITES establishes the necessary international legal framework for the prevention of trade in endangered animals and for an effective regulation of trade in others.<sup>65</sup> It regulates the export, re-export and import of live and dead plants and animals and parts and derivatives thereof, based on a system of permits and certificates.<sup>66</sup> These may only be issued if certain conditions are met and are presented to the relevant authority before consignments of specimens are allowed to leave or enter a country.<sup>67</sup>

The aim of CITES is to ensure that no species of wild flora and fauna becomes or remains subject to unsustainable exploitation due to international trade.<sup>68</sup> As such, CITES seeks to ensure that the international trade in endangered species occurs at sustainable levels and thus does not threaten their survival.<sup>69</sup> In total, 182 states are party to CITES and are therefore bound by its terms, which demonstrates how widely accepted CITES is globally.<sup>70</sup> CITES is often cited as one of the world’s most successful MEAs due to the quality of the text, which is “focused, pragmatic and able to evolve to address new challenges.”<sup>71</sup>

While CITES does not make explicit reference to trophy hunting, the CITES Conference of the Parties (“CoP”) has adopted resolutions that impact on the practice, making the rules on the import and export of trophies quite complex.<sup>72</sup> At the 17th CoP, a resolution on the trade of hunting trophies was unanimously adopted by the parties, which stated that “well-managed and sustainable trophy hunting is consistent with and contributes to species conservation, as it provides both livelihood opportunities for rural communities and

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65 W. Wijnstekers, “The Evolution of CITES” (International Council for Game and Wildlife Conservation, 2011) 32.

66 S. Hernick, “Banning Imports of Hunting Trophies and Protecting Endangered Wildlife” (2021) 50 *Denver Journal of International Law and Policy* 1, 47.

67 Ibid.

68 European Commission, “Background to CITES” <[https://ec.europa.eu/environment/cites/background\\_en.htm](https://ec.europa.eu/environment/cites/background_en.htm)> (Accessed 18 August 2022).

69 Reeve (n 63) 29.

70 Hernick (n 66).

71 Wijnstekers (n 65) 25.

72 Hellinx (n 61) 18.

incentives for habitat conservation, and generates benefits which can be invested for conservation purposes.”<sup>73</sup> As such, CITES aims to balance the benefits of trophy hunting against the risk of over-exploitation.

## CITES Categorisation

CITES regulates trade by including vulnerable species in one of three appendices, which have varying levels of restrictions on trade and become increasingly prohibitive depending on how trade affects the species and how sustainable the trade in that species is.<sup>74</sup>

Appendix I includes species threatened with extinction, for which trade must be subject to particularly strict regulation and is only authorised in exceptional circumstances. In the language of CITES, the term specimen includes animal trophies as it is taken to mean “any recognisable part or derivative” of a species.<sup>75</sup> CITES also requires that the import of any Appendix I specimen be only allowed if a scientific authority of the importing country conducts a non-detrimental finding (“NDF”), which shall be discussed in more detail later.

Appendix II species are “not necessarily now threatened with extinction but may become so unless trade is strictly regulated.”<sup>76</sup> As such, Appendix II is less restrictive than Appendix I. While Appendix II still requires the scientific authority of the exporting country to make a NDF, it does not require any NDF from the importing country.<sup>77</sup> Appendix II also contains so-called lookalike species<sup>78</sup> that are controlled because of their similarity in appearance to the other regulated species, which facilitates a more effective control of such species.<sup>79</sup>

Species in Appendix III are listed because a state has requested assistance in the control of trade in that species.<sup>80</sup> A party that has domestic legislation controlling the export of

certain species that are not in Appendix I or II may ask other parties for support in enforcing the domestic regulations.<sup>81</sup> Appendix III does not require a NDF from either the exporting or the importing country and so is the least trade-restrictive of the three appendices.<sup>82</sup>

## Non-Detrimental Findings

Trophy exports and imports of CITES-listed species under Appendixes I and II, and more specifically the off-take levels of listed species, are administered through a quota system established by either the range state (unilaterally) or, in some cases, the CITES CoP.<sup>83</sup> The implementation of these quotas requires a determination that the killing of the animal causes no detriment to the wider population.<sup>84</sup> This process is referred to as a NDF and is a critical component of the CITES regulatory framework. NDFs are required for Appendix I and II species only, however, they can be used to guide the trade in Appendix III species.<sup>85</sup> A NDF for an export or import permit is made by the designated CITES Scientific Authority of the country of export or import through the analysis of information, such as the population status of a certain species in a certain state, from the range country and the export permit.<sup>86</sup>

At the 8th CITES CoP, state parties adopted a resolution clarifying that scientific authorities should base NDFs on a species’ population status, distribution, population trend, harvest, other biological and ecological factors, and trade information.<sup>87</sup> As such, a NDF is a “science-based assessment” that should look at the “sustainability of the overall harvest.”<sup>88</sup> In effect, this means that parties should not examine a single import or export in isolation, but instead they should consider all trade in that species to determine whether additional

73 CITES, Trade in Hunting Trophies of Species Listed in Appendices I or II [2016] Conference Resolution 17.9-3.

74 Hellinx (n 61) 16.

75 The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973, Art 1(b).

76 Ibid. Art 4.

77 Ibid. Art 4.

78 Ibid. Art 2(2)(b).

79 Wijnstekers (n 65) 47.

80 CITES (n 75) Art 2(3).

81 M. Bowman, et al., *Lyster’s International Wildlife Law* (CUP, 2nd ed., 2010) 484.

82 CITES (n 75) Art. 5.

83 Hellinx (n 61) 18.

84 Conference Resolution 17.9 (n 128) 3.

85 Ibid.

86 P. Sheikh, L. Bermejo, “International Trophy Hunting” (Congressional Research Service, 2019) <<https://sgp.fas.org/crs/row/R45615.pdf>> (Accessed 8 August 2022) 8.

87 CITES, The Role of the Scientific Authority [1992] Conference Res. 8.6, 19.

88 CITES, Non-Detrimental Findings [2016] Conference Res. 16.7, (1)(a)-(b).

trade is non-detrimental.<sup>89</sup>

Whilst CITES mandates that state parties are to submit regular reports on NDFs to the Secretariat, it is important to note that the Secretariat is not always provided with the complete information on how states set their quotas and what science they are based upon, which is a problem that shall be looked at later.<sup>90</sup> Indeed, CITES may temporarily suspend the trade of a particular species for a number of reasons, including: if there are not sufficient guarantees that trade is not detrimental to the survival of the listed species; if adequate legislation to implement CITES is absent; if illegal trade is prevalent; and if required NDFs are missing.<sup>91</sup> Some suspensions of trade are specific to the species, whereas other suspensions can be for all trade for a country as a whole.<sup>92</sup> Currently, 31 states are affected by species-specific trade suspension resolutions, including Nigeria, Mozambique, Democratic Republic of Congo, Laos, and Tanzania.<sup>93</sup>

### **Problematic Methodology: Classification, Quotas and Enforcement**

CITES has been hailed as a dynamic and living treaty with the power to affect the lucrative business in the trade of wild animals.<sup>94</sup> Despite this, one must be cautious. Sand states that “after two decades, the jury is still out on CITES,”<sup>95</sup> with Reeve pointing out that “there has never been a thorough empirical assessment of the effectiveness of CITES.”<sup>96</sup> As such, it is important to analyse the methodology CITES deploys in regulating the trade in trophy hunting, including its system of classification, enforcement, and quota setting.

Firstly, an underacknowledged problem with the CITES regime is its system of categoris-

ing species.<sup>97</sup> Whilst the classification and separation of species in the three appendices seems like a perfectly acceptable approach to prioritise the protection of species that are most threatened, science's understanding of the ways in which ecosystems operate and how species coexist has rapidly increased in the past couple of decades and it is now apparent that the focus of protection needs to be on ecosystems and habitats as a whole.<sup>98</sup> Indeed, species that have been undervalued have subsequently come to be seen as occupying important, even vital, positions within their ecosystems. Accordingly, CITES's approach to classification is inadequate to deal with what we know about meaningful conservation.

By comparison, one convention that has taken a more holistic approach to conservation is the Convention on Conservation of Antarctic Marine Living Resources (“CCAMLR”),<sup>99</sup> which takes a broad ecological approach to conservation of the Antarctic environment and ecosystem.<sup>100</sup> CCAMLR obliges its parties “to adopt an ecosystem approach to the exploitation of Antarctic marine living resources... This means, for example, that when the Commission sets catch limits on krill fishing, it must not only consider the impact on krill populations but also the impact on populations of other animals, such as whales and penguins, which depend upon krill for food.”<sup>101</sup>

It is not suggested that the CITES system of classification should be overhauled and replaced, however, increased cooperation between the secretariats of different MEAs, as advocated by Yeater<sup>102</sup> and Caddell,<sup>103</sup> may

89 Hernick (n 66) 4.

90 P. Sheikh, L. Bermejo, “International Trophy Hunting” (Congressional Research Service, 2019) <<https://sgp.fas.org/crs/row/R45615.pdf>> (Accessed 8 August 2022) 9.

91 Hellinx (n 61) 18.

92 Sheikh (n 90) 9.

93 CITES, “Countries Currently Subject to a Recommendation to Suspend Trade” <<https://cites.org/eng/resources/ref/suspend.php>> (Accessed 21 August 2022).

94 Reeve (n 63).

95 P. Sand, “Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment” (1997) 8 *European Journal of International Law* 29, 35.

96 Reeve (n 63) 6.

97 E. Couzens, “CITES at Forty: Never Too Late to Make Lifestyle Changes” (2013) 22 *RECIEL* 331.

98 *Ibid.*

99 Convention on Conservation of Antarctic Marine Living Resources 1980.

100 P. Birnie, *International Regulation of Whaling: From Conservation of Whaling to Conservation of Whales and Regulation of Whalewatching: Volume I* (Oceana, 1985) 525.

101 S. Lyster, *International Wildlife Law* (Grotius, 1985), 156-158.

102 M. Yeater, “CITES Secretariat: Synergies Based on Species-level Conservation with Trade Implications,” in T. Honkonen and E. Couzens (eds.), *International Environmental Law-making and Diplomacy Review* (United Nations Environment Programme, 2013), 135.

103 R. Caddell, “Inter-treaty Cooperation, Biodiversity Conservation and the Trade in Endangered Species,” (2013) 22 *RECIEL* 264.



help to create a synergistic web with other conservation treaties to tackle wildlife protection more holistically.<sup>104</sup>

Secondly, Favre states that in the area of enforcement, CITES shows its age.<sup>105</sup> In recent decades, treaties have attempted to introduce provisions to enforce their obligations, however, in the 1970s, when CITES was enacted, the primary method of enforcement was the good faith of parties.<sup>106</sup> Given that there is no international police system to enforce the obligations of the treaty, CITES relies on peer and public pressure to move states towards better enforcement.

The problems of enforcement faced by CITES are not just the limitations of the treaty language, but also limitations within individual state parties. One of the strongest criticisms of CITES is that many of its signatories lack the strong governance to effectively enforce CITES restrictions.<sup>107</sup> The CITES Secretariat does not enforce the treaty; instead, each state party adopts so-called CITES implementing legislation, which are national laws that allow CITES to be implemented and enforced<sup>108</sup> For example, CITES is implemented in the EU through a set of Regulations known as the EU Wildlife Trade Regulations, which includes Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.<sup>109</sup> Whilst the EU's implementation of CITES is effective and stringent, this is frequently not the case. Critics of CITES point out that compliance and enforcement are clearly lacking within the regime as the enforcement of national CITES legislation is a low priority for state parties.<sup>110</sup>

Indeed, studies have found that state parties often face a lack of adequate domestic laws,

lack of an adequate number of government employees, lack of scientific experts within a country, lack of resources for the scientists that are present, lack of support from the police and courts for wildlife crime prosecutions and lack of serious punishment when a prosecution is successful.<sup>111</sup> These factors are serious impediments to the efficacy of CITES as it relies on effective implementation by signatory states.

Finally, one of the most serious shortcomings of CITES is the lack of, or loose state control and monitoring of, hunting quotas.<sup>112</sup> Despite the fact that trophy hunting quotas should be based on NDFs and that export permits should be granted only where the export is not detrimental to the survival of the species, NDFs are rarely carried out properly or are frequently ignored by management authorities of the state concerned.<sup>113</sup> Further, under the CITES system, the quotas set for trophy hunting can only be monitored retrospectively following a state party's submission of its annual trade reports.<sup>114</sup> However, these reports are frequently not submitted and, when they are, the set quotas are often found to be exceeded.<sup>115</sup>

The methodology used to set quotas for sustainable offtakes is also problematic. When a state party is seeking to set a quota for the offtakes allowed of a certain species, the state must submit a proposal to the CITES Secretariat for confirmation. Such proposals must be scientifically based in order for the quota to enter into force. However, the scientific methodology used by states to set quotas can be unreliable. Reliable data of the population of a certain species within a state's territory is extremely difficult to obtain for rare species, and yet this information is crucial in determining whether a quota is sustainable.<sup>116</sup> Further, states often use unreliable or outdated models to conduct population surveys leading to inaccurate results.<sup>117</sup>

104 Couzens (n 97).

105 D. Favre, "Overview of CITES" (Animal Legal and Historical Centre, 2002) < <https://www.animallaw.info/intro/convention-trade-endangered-species-cites> > (14 September 2022).

106 Couzens (n 97).

107 Ibid.

108 Ibid.

109 Council Regulation (EC) No 338/97 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein [1996].

110 K. Baakman, *Testing Times: The Effectiveness of Five International Biodiversity Related Conventions* (Wolf Legal Publishers, 2011) 264.

111 Favre (n 105).

112 Prisner-Levyne (n 64) 246.

113 Reeve (n 63) 37.

114 Ibid.

115 Ibid.

116 Ibid.

117 A.Trouwborst, et al., "Spotty Data: Managing International Leopard Trophy Hunting Quotas Amidst Uncertainty" (2019) 32 *Journal of Environmental Law* 253, 271.

Trouwborst et al. argue that the methods used by states to obtain population data fall short of fulfilling the requirements of precaution, sustainable use, and adaptive management, and emphasise their arbitrariness and lack of scientific basis.<sup>118</sup> By way of illustration, South Africa, one of the world's hotspots for trophy hunting, has been found to set quotas that are too high to be sustainable, putting too much pressure on wildlife.<sup>119</sup> This is because political, ideological, and financial interests often undermine the use of science when countries come to set and maintain quotas.<sup>120</sup> Additionally, states' scientific agencies are often known to be "captured" by strong industries who "wish to see regulations go in one direction or another, and thus these industries exert huge influence on the regulatory process via lobbying and other tactics."<sup>121</sup> As a result, the CITES quota system as it stands "is uncontrolled, has no scientific basis and is wide open to abuse."<sup>122</sup>

## The Way Forward

Earlier, this article considered the argument that banning trophy hunting is a serious threat to biodiversity and the livelihoods of those who rely on the practice as a source of income. However, what the proponents of the conservation argument actually describe is how the loss of funding from trophy hunting may impact conservation, without specifying any unique benefits of trophy hunting itself.<sup>123</sup> The claim that trophy hunting leads to positive conservation outcomes does not withstand scrutiny. This is because trophy hunting often relies on deep geopolitical inequalities, particularly in Africa, where it fails to deliver demonstrable conservation outcomes.<sup>124</sup> While it is easy to become confused and be misled by numbers and statistics that seem to

contradict each other, the fact of the matter is that "killing to conserve is neither an ethical nor sustainable approach to wildlife conservation."<sup>125</sup>

It is highly likely that if trophy hunting had never existed and it was suggested that trophy hunting was going to be introduced as a new method to improve wildlife conservation, this would be rejected as an outrageous proposition. Trophy hunting takes away the agency of essentially voiceless animals, it denies their individuality and militates against their right to exist.<sup>126</sup> Whilst CITES does regulate trophy hunting and is focused on preventing the extinction of endangered species, it falls short when it comes to protecting the integrity of populations or ensuring the welfare of targeted species.<sup>127</sup>

It is for this reason that the only acceptable outcome of this debate is, ultimately, prohibiting trophy hunting at a global level. At present, the trophy hunting debate remains too polarised to reach any international agreement regarding the future of trophy hunting. However, given the urgency of the current man-made biodiversity crisis and in acknowledgment that trophy hunting causes great suffering to animals, this chapter shall seek to propose a strategy that will eventually lead to the prohibition of trophy hunting.

To start, this section shall argue that sympathetic states should enact import bans on hunting trophies in the short to medium term, in the hope that such bans would eventually start to shift the status quo at international level. This would be particularly effective if states with considerable political clout took the first steps to set an example to smaller states that may want to garner international favour, encouraging them to follow suit. In the longer term, because the groundwork will have been laid by states enacting import bans, it would not be such a great leap to advance the topic of prohibition at the CITES CoP. The aim of this would be either to achieve an outright ban

118 Ibid.

119 Republic of South Africa, Department of Environmental Affairs, "Leopard Quota Review: South Africa" (2020) CITES AC30 Doc 15 Annex 3.

120 Dellinger (n 54) 38.

121 Ibid.

122 Reeve (n 63) 37.

123 K. Nowak, et al., "Trophy hunting: Bans Create Opening for Change" (Science, 25 October 2019) <<https://www-science-org.queens.ezp1.qub.ac.uk/doi/10.1126/science.aaz4135>> (Accessed 28 August 2022).

124 Born Free, "Trophy Hunting: Busting the Myths and Exposing the Cruelty" (2019) <<https://www.bornfree.org.uk/publications/busting-the-myths>> (Accessed 29 August 2022).

125 Born Free, et al., "Joint Position on Trophy Hunting" (2022) <[https://www.bornfree.org.uk/storage/media/content/files/Joint%20NGO%20position%20on%20trophy%20hunting\\_final%20\(Logos\).pdf](https://www.bornfree.org.uk/storage/media/content/files/Joint%20NGO%20position%20on%20trophy%20hunting_final%20(Logos).pdf)> (Accessed 28 August 2022).

126 A. Ahmad, "The Trophy Hunting Debate: A Case for Ethics" (2016) 51 Economic and Political Weekly 29, 31.

127 Born Free (n 124) 4.

on trophy hunting at the international level or to follow the example set by the 1982 International Whaling Commission's ("IWC") commercial whaling moratorium by agreeing to set trophy hunting quotas at zero for an indefinite period of time, as shall be discussed later.

### Short to Medium Term: Trophy Hunting Import Bans

The discussion in the previous section highlights the difficulties in making the determination that trophy hunting is not detrimental to a species. Given the fact that NDFs are acknowledged as difficult, resource intensive and scientifically based decisions, a state may come to the conclusion that the cost of making NDFs is simply not worth allowing a very small number of individuals to import trophies from animals they have killed for pleasure.<sup>128</sup> Indeed, import bans are politically very popular with surveys conducted across the UK, USA and the EU showing that between 75% and 96% of respondents favoured trophy hunting bans.<sup>129</sup> As such, states would be well justified to throw in the towel altogether and enact bans on the import of hunting trophies. States may also decide to ban trophy imports for a number of other credible reasons, such as to conserve endangered species, to deter citizens from killing endangered species, to prevent the trade in trophies, and for ethical reasons.<sup>130</sup>

Trophy hunting import bans are proven to be effective in reducing the number of citizens that travel abroad to hunt trophies.<sup>131</sup> This is because trophy hunting necessarily involves the taking of a trophy, which is then transported back to the hunter's country of origin; but if they are deprived of the option to bring their trophy home, the incentive to trophy hunt goes away. A notable example of this is the USA's import ban on polar bear trophies. In 2008, polar bears were listed as threatened under the USA's Endangered Species Act,<sup>132</sup> which triggered a provision in the Marine Mammal Protection Act prohibiting all imports of polar

bear parts, including trophies.<sup>133</sup> This ban did not prevent US citizens from hunting polar bears in Canada, the only state that permits polar bears to be hunted by non-indigenous people, it only prohibited them from taking back trophies and other derivatives.<sup>134</sup>

Many critics believed that hunters from the USA would hunt polar bears all the same, whilst others believed that Chinese and European hunters would fill the gap.<sup>135</sup> However, neither of these theories came to pass. Instead, this single-state import ban significantly decreased the number of polar bears killed by hunters. In the following four years, hunters killed 41.7% fewer polar bears than before the import ban, which clearly demonstrates the success of this sort of legislation.<sup>136</sup> Additionally, in 2014, when the USA banned the import of elephant trophies from Zimbabwe, on the basis that Zimbabwe had failed to show that it was taking elephant management seriously, 108 out of the 189 US citizens that had planned to hunt an elephant there cancelled their trip.<sup>137</sup>

However, the CITES Secretariat is not receptive to individual states' freedom to enact trophy hunting bans as they see fit. CITES undeniably encourages states to allow trophy hunting imports and avoid enacting trophy hunting bans. Indeed, a CITES Resolution from the CoP prompts states to accept the import of hunting trophies by encouraging them to "consider the contribution of hunting to species conservation and socio-economic benefits, and its role in providing incentives to conserve wildlife, when considering stricter domestic measures and making decision relating to the import of hunting trophies."<sup>138</sup>

Further, pro-trophy hunting proponents make the argument that import bans "threaten national sovereignty," which is the view of Safari

128      Hernick (n 66) 16.

129      Born Free, "Global NGOs Call for a Ban on Trophy Hunting Imports" (7 July 2022, Born Free) <trophy-hunting-position-paper> (1 September 2022).

130      Ibid. 18.

131      Hernick (n 66) 18.

132      Endangered Species Act 1973.

133      Marine Mammal Protection Act 1972.

134      Hernick (n 66) 18.

135      Ibid.

136      J. Casamitjana, J. Tsang, "Killing for Trophies: An Analysis of Global Trophy Hunting Trade" (2016), International Fund for Animal Welfare, 7.

137      R. Nuwer, "Hunt Elephants to Save Them? Some Countries See No Other Choice" (The New York Times, 2017) <elephants-lions-africa-hunting.html> (Accessed 2 September 2022).

138      CITES (n 73) 3.



Club International.<sup>139</sup> This argument is ill-conceived as trophy hunting import bans objectively do no such thing. The argument that enacting bans is an affront to sovereignty is a claim that states do not have the authority to regulate what enters their territory. However, enacting import bans is simply a way of regulating the trade in wildlife within a state's own borders, which is an act of sovereignty itself.<sup>140</sup> For example, one would neither bat an eyelid if a state banned the import of Class A drugs into its territory, nor claim that it was an affront to another state's sovereignty because that state allows Class A drugs to be traded. Therefore, trophy hunting import bans do not threaten the sovereignty of a state that permits trophy hunting. The argument may be different where a state banned its citizens from going to a certain state to trophy hunt,<sup>141</sup> but even such an exercise of extraterritorial jurisdiction would be neither unprecedented nor unjustifiable.<sup>142</sup>

As previously discussed, proponents of trophy hunting argue that trophy hunting import bans harm endangered species because without revenue from trophy hunting, communities lack incentives to conserve endangered species.<sup>143</sup> While import bans are unlikely to cause the trophy hunting industry to crumble immediately, a number of examples show that the end of trophy hunting does not spell disaster for a state and its wildlife. In 1977, Kenya banned trophy hunting and required trophy hunting safaris to turn their properties into photographic and ecological safaris.<sup>144</sup> In the short-term following the ban, Kenya's wildlife took a knock and critics were quick to conclude that this was concrete evidence of trophy hunting's positive effects on wildlife conservation. However, research showed that the wildlife decline was instead coming from rapid population growth and human-wildlife

conflict.<sup>145</sup> In recent years, Kenya's wildlife has flourished, and it is now home to one of the largest populations of elephants and black rhinos on the continent of Africa.<sup>146</sup> Additionally, before rescinding its ban on trophy hunting for political reasons in 2019, Botswana was another example of excellent wildlife conservation in the wake of a trophy hunting ban in 2014. Whilst elephant populations declined by 30% between 2007 and 2014, in the years following the ban Botswana became home to 30% of the earth's elephant population.<sup>147</sup> The examples of Botswana and Kenya undermine the argument that wildlife will suffer if trophy hunting bans are imposed, when in reality wildlife thrives.

Momentum for trophy hunting import bans is building. This article has already pointed out the efforts by France and Australia in banning the import of lion trophies, as well as the Netherlands in banning the import of over 200 species in 2016. Despite the fact that the UK's own efforts have stalled, Belgium, Spain, Italy, Finland and Switzerland have either committed themselves to introducing import bans or presented motions containing a proposal for a ban.<sup>148</sup> Indeed, the Belgian Minister of Climate, Environment, Sustainable Development and Green Deal, Zakia Khattabi, remarked that Belgium's impending ban will hopefully encourage other countries to follow suit and that there will soon be a full ban in place at the European level.<sup>149</sup> These are significant developments given that the European Union is the second largest importer of trophies behind the USA. Although a Union-wide ban is still far off, it is a clear indicator of the shift in status quo with regards to state tolerance of trophy hunting.

Long Term: Global Trophy Hunting Prohibition  
Instituting an international prohibition on tro-

139 S. Chapman, "Letter to Boris Johnson, MP, from Scott Chapman, President of the SCI" (2021) <<https://safari-club.org/wp-content/uploads/2021/06/14-June-2021-Letter-to-Prime-Minister-Boris-Johnson-re-Action-Plan-for-Anima.pdf>> (Accessed 2 September 2022).

140 Hernick (n 66) 17.

141 Ibid. 17.

142 C. Blattner, "Trophy Hunting, the Race to the Bottom, and the Law of Jurisdiction," in A. Peters (ed.), *Studies in Global Animal Law* (Springer, 2020) 135.

143 Hernick (n 66) 19.

144 Ibid.

145 Ibid.

146 Ibid.

147 L. De Waal, "Confusion over Botswana's Elephant Population" (27 November 2018, Conservation Action) <<https://conservationaction.co.za/media-articles/confusion-over-botswanas-elephant-population/>> (Accessed 2 September 2022).

148 HSI, "Belgium Parliament is resolved to ban the import of hunting trophies from internationally protected species" (25 March 2022, HSI) <<https://www.hsi.org/news-media/belgium-parliament-ban-the-import-of-hunting-trophies/>> (Accessed 5 September 2022).

149 Ibid.

phy hunting presents an opportunity to re-think how states can conserve wildlife in non-extractive ways that are consistent with shifting public opinion.<sup>150</sup> Indeed, in searching for a precedent that would guide a prohibition of trophy hunting, the moratorium on commercial whaling may provide an answer. Bowman writes that in the history of international institutional cooperation, there are only a few activities from treaty-based organisations that can be appreciated as truly pivotal, and the IWC's commercial whaling moratorium is one such example.<sup>151</sup>

In 1982, after centuries of relentless global whale depletion by commercial hunters, the IWC introduced a complete ban on commercial whaling, known generally as the moratorium or "zero quotas," which came into force in the 1985-1986 season.<sup>152</sup> The moratorium was only intended to be temporary so that whale stocks would recover and that, in due course, safe and sustainable levels of at least some species of whale would have recovered sufficiently to resume whaling. So far, however, any attempt at finding an acceptable basis for resuming whaling globally has failed and the moratorium is still in effect, and for good reason.

The IWC's moratorium reflected the opinion held by many in the media, environmentalists and the public in general that whales were defenceless if humankind failed to protect them from itself. Indeed, "man had evolved the tenet that the whales, being creatures of the open sea, belonged to no one and therefore to all."<sup>153</sup>

Upon analysis of the records from the IWC's 34th Annual Meeting, during which the moratorium was agreed, the reasoning put forward by anti-whaling states as to why commercial whaling should end very closely mirrors the arguments put forward by anti-trophy hunting

scholars.<sup>154</sup> As such, it is a good example for anti-trophy hunting advocates to look to in order to start a meaningful discussion on ending the practice. The proposal to end commercial whaling, which was introduced by the Seychelles, and the ensuing discussion by state parties to the IWC highlight two main arguments that can be utilised in the trophy hunting debate.

Firstly, proponents of the ban on commercial whaling principally raised moral arguments to justify their stance.<sup>155</sup> Awareness of the moral justification to end whaling was raised by Greenpeace's influential "Save the Whale" campaign in the 1970s, which shone a spotlight on the cruel and unnecessary hunting of whales. In the last few decades, whales have been hailed as creatures with "acknowledged intelligence and rich social behaviour."<sup>156</sup> Whales are anthropomorphised internationally as the "humans of the sea," and as "sentient creatures . . . that should be spared the horror of harpooning."<sup>157</sup> Consequently, by 1992, a number of nations had come to treat the moratorium as a permanent ban, shifting the focus from "sustainability to protecting whales for non-commercial, essentially moral reasons."<sup>158</sup>

Secondly, the over-exploitation of whale populations by the commercial whaling industry was another key reason to bring about the moratorium. The late nineteenth century technological advances for capturing whales, when combined with the expansion of processing capabilities in the early twentieth century, created an industry that could catch and quickly render virtually any whale in any ocean.<sup>159</sup> As a result, during the twentieth century alone, almost three million whales were

150 Nowak (n 123).

151 M. Bowman, "'Normalising' the International Convention for the Regulation of Whaling" (2008) 29 *Michigan Journal of International Law* 293, 294.

152 M. Fitzmaurice, "International Convention on the Regulation of Whaling" (2017) United Nations Audiovisual Library <icrw\_e.pdf> (Accessed 29 August 2022).

153 E. Sluper, *Whales and Dolphins* (University of Michigan Press, 1976) 150.

154 IWC, "Verbatim Record of the 34th Annual Meeting" (Brighton, UK, 1982) IWC/34/VR1.

155 G. Fullem, "Norway, the International Whaling Moratorium, and Sustainable Use: A Modern Environmental Law Conundrum" (1995) 3 *Willamette Bulletin of International Law and Policy* 79.

156 A. D'Amato, S. Chopra, "Whales: Their Emerging Right to Life" (1991) 85 *American Journal of International Law* 21, 22.

157 Fullem (n 155) 105.

158 C. Stone, *The Gnat Is Older Than Man: Global Environment and Human Agenda* (Princeton University Press, 1993) 91.

159 R. Rocha, et al., "Emptying the Oceans: A Summary of Industrial Whaling Catches in the 20th Century" (2015) 76 *Marine Fisheries Review* 37.

killed for their oil and meat, bringing many whale species and populations to the brink of extinction.<sup>160</sup> Before the moratorium came into force, commercial whaling was deemed to be sustainable due to the fact that scientifically-based quotas were imposed on the number of whales that could be “harvested.”<sup>161</sup> However, in its proposal, the Seychelles pointed to the fact that the claims made by the IWC Scientific Body that whaling was sustainable were unsubstantiated due to the abundant scientific uncertainty and the lack of data on whale populations at that time.<sup>162</sup> Rather, the slow increase in scientific understanding was indicating the decline of whale populations, as opposed to sustainable population levels.<sup>163</sup> The past history of economic concerns overriding science has shown species after species being driven to extinction, and, therefore, the benefit of the doubt was given to the whales in this instance.<sup>164</sup>

The international moratorium on commercial whaling has been a tremendous success. It has reduced whale hunting dramatically from its peak in the 1960s and has brought almost all species of whales out of danger of extinction.<sup>165</sup> Today, the moratorium stands as one of, or perhaps the paradigm of a successful international regime for the conservation of wildlife.<sup>166</sup> Although a comparable global prohibition on trophy hunting is, at best, a couple of decades off, it is worthwhile identifying the whaling moratorium as a precedent to be loosely followed. After all, global bans that weigh the value of wildlife as greater than the economic benefit of continued exploitation are few and far between.

## Alternatives to Trophy Hunting

Trophy hunting import bans will, in all likelihood, have the effect of decreasing the

number of trophy hunters participating in the practice abroad. Consequently, the industry will shrink with fewer people paying the high prices to hunt and kill endangered animals abroad. The proponents of trophy hunting claim that there are no viable alternatives for less economically developed countries that are trophy hunting destinations. However, sustainable alternatives to trophy hunting do exist and could reduce the reliance on a “small and narrowing cohort of wealthy Western donors.”<sup>167</sup> Scholars have proposed a number of alternatives to ensure that states that once benefitted from trophy hunting will have the chance to adapt and bring in income from other activities, some of which are rather innovative. Indeed, these alternatives will be of great importance in the event of a global prohibition.

One such example is “green hunting.”<sup>168</sup> This is where scientists work directly with trophy hunters to shoot and sedate individual animals as part of their research.<sup>169</sup> Trophy hunters would still be able to enjoy tracking an animal, taking aim and firing a gun to tranquilise the animal, and then posing for photos with their “trophy,” without the stigma of killing a majestic animal.<sup>170</sup> They would also be partaking in active scientific research by assisting scientists fasten a GPS radiotag to their trophy, which would allow scientists access to continuous data on individual animals in order to better understand endangered species throughout their life cycles.<sup>171</sup>

In addition, responsible eco-tourism and photographic safaris can be a positive alternative to trophy hunting. Shooting an animal with a camera, rather than a gun, will not only save that animal's life, but enable it to continue to generate funds through photographic tourism for years to come.<sup>172</sup> A recent study found

<sup>160</sup> Humane Society International, “40th Anniversary of Global Ban on Commercial Whaling Commemorated” (HSI, 18 July 2022) <<https://www.hsi.org/news-media/40th-anniversary-of-global-ban-on-commercial-whaling-commemorated/>> (Accessed 29 August 2022).

<sup>161</sup> Ibid.

<sup>162</sup> IWC (n 123).

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> I. Hurd, “Almost Saving Whales: The Ambiguity of Success at the International Whaling Commission” (2012) 26 *Ethics and International Affairs* 103.

<sup>166</sup> IWC (n 123).

<sup>167</sup> (n 155).

<sup>168</sup> M. Greyling, et al., “Green Hunting as an Alternative to Lethal Hunting” in J. Jayewardene (ed.) *Endangered Elephants: Past, Present and Future* (Biodiversity and Elephant Conservation Trust, 2004).

<sup>169</sup> M. Cove, “What if Trophy Hunters Didn't Kill Their Trophies?” (2019) 12 *Conservation Letters* 1.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Born Free, “Trophy Hunting: What are the Alternatives?” <<https://www.bornfree.org.uk/articles/trophy-hunting-alternatives>> (Accessed 6 September 2022).



that a live elephant may be worth as much as US\$1.6m over its lifetime through income from photographic tourism, many times the fee typically paid by a trophy hunter to shoot one.<sup>173</sup> Other alternatives include sustainable granting communities land, conservation-compatible agriculture, and coexistence approaches, all which can benefit communities and conservation to a greater extent than trophy hunting.<sup>174</sup>

The alternatives to trophy hunting are plentiful and immensely creative. Indeed, introducing bans on trophy hunting would create an impetus to come up with new and innovative ways to tackle the current and worsening biodiversity crisis.

## Conclusion

Nine years following the death of Cecil the lion, this article has sought to argue that "trophy hunting does not make sense morally, economically, biologically, or from a conservation-incentive point of view."<sup>175</sup> The personal desires of trophy hunters have for too long been allowed to drive public policy in this area. As such, it is no surprise that the UK's proposed transformational import ban on hunting trophies was allegedly derailed by hunting lobbies pouring millions into perpetuating the claim that trophy hunting is an essential aspect of meaningful conservation,<sup>176</sup> as well as by support for the practice offered up by the IUCN and prominent members of the British royal family.<sup>177</sup> However, personal wants and needs are, and must remain, irrelevant to the overall problem of species extinction.<sup>178</sup> States must ask themselves who the continued acceptance of trophy hunting is benefitting; because it is rarely the local communities and certainly not the animals, but rather wealthy white men, which in today's society is simply

not a good look.<sup>179</sup>

The former president of Botswana, Ian Khama, stated that, "with the decline of wildlife worldwide, and many species approaching extinction, all caused by man, how can there be justification in trophy hunting? How can any government say they are fighting poaching whilst allowing trophy hunting at the same time?... I call upon those countries from where these promoters of extinction come from to step up and ban the import of trophies." Of course, states must tackle issues of poverty, corruption, habitat loss and subsequent human-wildlife conflict, which are legitimate concerns of both sides of the trophy hunting debate and cause suffering to both humans and wildlife. However, the fact of the matter remains that "one cannot save rare animals by killing them."<sup>180</sup>

173 Cove (n 169).

174 Nowak (n 123).

175 Dellinger (n 54) 59.

176 H. Horton, "US hunting lobby spent £1m on fight to delay UK trophy import ban" (The Guardian, 29 June 2022) <[us-hunting-lobby-spent-1m-on-fight-to-delay-uk-trophy-import-ban](https://www.theguardian.com/us-hunting-lobby-spent-1m-on-fight-to-delay-uk-trophy-import-ban)> (Accessed 12 July 2022).

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