



THE HUMANE SOCIETY
OF THE UNITED STATES



HUMANE SOCIETY
INTERNATIONAL



HUMANE SOCIETY
LEGISLATIVE FUND™



IFAW
International Fund
for Animal Welfare



CENTER for
BIOLOGICAL
DIVERSITY

Because life is good.



December 8, 2017

Mr. Joshua Winchell
Council Designated Federal Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803
joshua_winchell@fws.gov

Mr. Timothy Van Norman
Chief, Branch of Permits
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041

***Re: Comments Regarding the Composition of the Proposed International
Wildlife Conservation Council (Docket No. FWS-HQ-R-2017-N118)***

Dear Mr. Winchell and Chief Van Norman,

As detailed in our comments submitted last month, The Humane Society of the United States (“HSUS”), Humane Society International (“HSI”), Humane Society Legislative Fund (“HSLF”), Center for Biological Diversity (“CBD”), International Fund for Animal Welfare (“IFAW”), and Born Free USA (“BFUSA”) strongly urge the U.S. Fish and Wildlife Service (“Service”) not to establish the euphemistically-named International Wildlife Conservation Council (“IWCC”), as establishing the IWCC would waste taxpayer resources and ignore the best available science to promote the interests of the trophy hunting industry. *See* 82 Fed. Reg. 51,857 (Nov. 8, 2017). Not only is the IWCC inessential and contrary to the public interest, the IWCC would violate the Federal Advisory Committee Act (“FACA”, 5 U.S.C. App. 2) because the proposed membership of the council is not fairly balanced and would be inappropriately influenced by commercial interests. Thus, it would be arbitrary and

capricious and not in accordance with law for the Service to rely on any recommendations submitted by this biased council. 5 U.S.C. § 706.

If the Service moves forward with establishing this duplicative and inherently biased advisory council, our proposals for the membership composition of the IWCC are discussed below.

Requirements for Establishing an Unbiased Federal Advisory Committee

The FACA provides that “new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary.” 5 U.S.C. App. 2 § 2(b)(2). Further, “[n]o advisory committee shall be established unless such establishment is determined...to be in the public interest in connection with the performance of duties imposed on that agency by law.” *Id.* § 9(a)(2). Advisory committees can only be used “solely for advisory functions” (*id.* § 9(b)) and must serve a “clearly defined purpose” (*id.* § 5(b)(1)). The membership of an advisory committee must “be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee” (*id.* § 5(b)(2)), and must “not be inappropriately influenced by... any special interest” (*id.* § 5(b)(3)).

While federal courts have held that “an advisory committee with a narrow, technical mandate does not have to include representatives of those who might be affected by the committee’s work” (*Cargill, Inc. v. United States*, 173 F.3d 323, 338 (5th Cir. 1999)), the IWCC does not have a narrow technical mandate. Instead, the IWCC is tasked with addressing “substantive legislative policy issues” pertaining to the management of threatened and endangered wildlife, and as such any recommendations by the IWCC are *ultra vires* if the council lacks fair balance in its membership. *See Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 566 F. Supp. 1515, 1517 (D.D.C. 1983).

Agency actions contrary to the requirements of FACA are subject to judicial review under the Administrative Procedure Act (5 U.S.C. § 702). *See, e.g., Fertilizer Institute v. U.S. E.P.A.*, 938 F.Supp. 52, 54-55 (D.D.C., 1996); *Cargill, Inc. v. United States*, 173 F.3d 323, 335 (5th Cir. 1999) (“courts may enforce FACA’s ‘point-of-view balance’ requirement—a ‘balance’ requirement that is even more subjective than is the functional balance requirement”); *Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1049 (D.D.C. 1974) (enjoining agency from convening advisory committee meetings unless conducted in full compliance with FACA).

According to the Service, the IWCC will have up to 18 discretionary members and 4 ex officio members:

- Ex officio members will include:
 - Secretary of the Interior or designated DOI representatives; and
 - Secretary of State or designated Department of State representatives.
- The remaining members will be selected from among, but not limited to, the entities listed below. These members must be senior-level representatives of their organizations and/or have the ability to represent their designated constituency.
 - Wildlife and habitat conservation/management organizations;

- U.S. hunters actively engaged in international and/or domestic hunting conservation;
- The firearms or ammunition manufacturing industry;
- Archery and/or hunting sports industry; and
- Tourism, outfitter, and/or guide industries related to international hunting.

82 Fed. Reg. at 51,858.

We are greatly concerned that the proposed membership of the IWCC is inherently unfairly balanced and would cause the council to be inappropriately influenced by special interest groups in violation of FACA. 5 U.S.C. App § 5(b). Four of the five categories of proposed membership are entities that have a clear financial interest in weakening the Service's regulations pertaining to the import of hunting trophies. Further, while many wildlife conservation organizations do not support trophy hunting as a wildlife management tool, there are some organizations that self-identify as conservationists that are aligned with the trophy hunting industry, meaning that the proposed composition of the IWCC could very well consist entirely of one viewpoint on this controversial issue, in violation of FACA.

Even if the Service adds representation from conservation and wildlife management groups that recognize that the best available science shows that trophy hunting fails to enhance the survival of threatened and endangered species, the IWCC may nevertheless be unfairly balanced. For example, if the IWCC were to have four members that are trophy hunters, four members that are from the firearms or ammunition manufacturing industry, four members that are from the archery and/or hunting sports industry, and four members from the tourism/outfitter/guide industries related to international hunting, but only two members from the wildlife and habitat conservation/management organizations, such a committee would not be fairly balanced.

Therefore, we strongly urge the Service, if it moves forward with establishing the IWCC, to not only adjust the purpose of the council (e.g., to evaluate whether the best available science actually supports promotion of trophy hunting), but to also ensure that individuals with knowledge and training in humane and sustainable wildlife management practices have a majority representation on the IWCC. If conservationists only have minority representation, then it would be essential that any recommendations sent from the IWCC to the Service also include dissenting views.

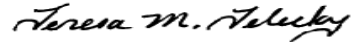
Because the proposed purpose of the council is contrary to our organizational missions, none of the undersigned groups are nominating themselves as formal members of the IWCC, though we plan to robustly participate in public meetings of the IWCC. In order to ensure that there is at least one member of the conservation community on the IWCC, **we hereby submit the nomination of Andrew Wetzler, Deputy Chief Program Officer at the Natural Resources Defense Council**, who is an expert in Endangered Species Act implementation (resume attached).

As detailed herein and our prior comment letters, the IWCC is unnecessary, duplicative, not in the public interest, and designed to be inappropriately influenced by the trophy hunting industry in a manner that undermines the Service's statutory duties under the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and FACA. While we provide a nomination for IWCC membership, it remains our strong recommendation that the IWCC not be established at all.

Sincerely,




Anna Frostic
Managing Attorney, Wildlife Litigation
The Humane Society of the United States



Teresa M. Telecky, Ph.D.
Senior Director, Wildlife Department
Humane Society International



Keisha Sedlacek
Senior Regulatory Specialist, Federal Affairs
Humane Society Legislative Fund



Prashant K. Khetan
Chief Executive Officer & General Counsel
Born Free USA



Jeff Flocken
Regional Director
International Fund for Animal Welfare



Sarah Uhlemann
Senior Attorney & Int'l Program Director
Center for Biological Diversity

Andrew E. Wetzler

20 N. Upper Wacker Drive, Suite 1600, Chicago, IL 60606
(312) 663-9900
awetzler@nrdc.org

PROFESSIONAL EXPERIENCE:

1998 - present

Natural Resources Defense Council, Chicago, Illinois

Deputy Chief Program Officer (2016 - present)

Reports to the Chief Program Officer and helps to manage all NRDC's Programs (275 staff and a \$50 million-dollar budget) including strategic planning, budgeting, and coordination. Direct management responsibility for NRDC's Health, Oceans, Water, Urban Solutions and New York Regional programs. Primary liaison with NRDC's Litigation, IT, and Facilities departments.

Co-Director, Land & Wildlife Program (2010 - 2015)

Directs NRDC's program to protect endangered wildlife and wild places, supervises a staff of twenty and a budget of \$3.5 million, including development, planning, and coordination of wildlife campaigns.

Previous Positions:

Director, Wildlife Conservation Project (2004 - 2008)

Senior Attorney, Marine Mammal Protection Project (2003 - 2004)

Senior Project Attorney, Marine Mammal Protection Project (2000 - 2003)

Project Attorney, Southern California Ecosystem Project (1998 - 2000)

- *International experience* includes work on marine mammal issues and wildlife trade, including NRDC's campaigns on ocean noise pollution, polar bear trade, elephant ivory trade, and beluga sturgeon. Experience with a wide variety of international institutions, including CITES, OSPAR, ACCOBAMS, UNEP and IUCN.
- *Lobbying experience* includes extensive lobbying in the United States, including before Congress and numerous federal agencies such as the State Department and U.S. Fish and Wildlife Service; providing testimony before Congressional Committees and State legislatures.
- *Media experience* includes numerous television and radio appearances, extensive experience with print reporters; authoring press releases and op-eds; managing social media networks; and strategic communications planning. Experience with polling and focus groups as well as message development and branding.
- *Development experience* includes foundations relations; major donor prospect identification, cultivation, and asks; and working with NRDC's Membership Department, including editing and helping to plan direct mail.

