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# The Day the Hunter's Saved the Species

Brian Davis  
*Seton Hall Law*

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# The Day the Hunter's Saved the Species

Brian Davis

## Introduction

When someone grows up having only one pet during their childhood, and it being a hamster, most people would tend to lose a grasp on animal's rights. This is not to say that I do not share a compassion for all animals, but I would not lose sleep, for example, over poachers and hunters across the world killing animals. Whatever it is that makes people click and want to stand up to all the atrocities facing animals around the world just is not in me. I would love to have a dog one day and to care for it as if it were my own child, but until that day I truly believe that I will never fully grasp the concept of caring so deeply for an animal. I want to make it clear that I am not down-playing all of the activism across the country and world for animal protection, but simply setting up the rationale for this paper.<sup>1</sup>

The topic I chose was the current battle between ranchers in Texas and animal rights activists on the ethical and legal dilemma of being able to hunt three species of antelopes that are listed on the Endangered Species list as "endangered."<sup>2</sup> The initial reaction by most is one of disbelief that anyone is allowed to hunt for animals that are "endangered" in their natural habitat. However, it is my contention after looking at both sides of the argument that the hunting of the scimitar-horned oryx, addax, and dama gazelle are both ethical and legal, especially in the dire economic times we currently face as a country.

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<sup>1</sup> I understand the opening paragraph may come off harsh, but in my eyes it gives the backdrop for my sentiments for the issue at-hand. I wanted my honesty to come out throughout this paper, and the opening paragraph allows me to be true to myself and outline my feelings towards the issue of protecting all animals.

<sup>2</sup> Endangered and Threatened Wildlife and Plants; Exclusion of U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions, 70 FR 52310-01, at 52311 (2005).

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The reason I chose only the scimitar-horned oryx, addax, and dama gazelle is because these antelopes are the only species being hunted on the Texas ranches that are deemed “endangered.” The other species listed in the *60 Minutes* story, such as the Cape Buffalo, are not endangered and are not part of any of the rulings listed by the U.S. Fish and Wildlife Service and not at the forefront of the suit by Friends of Animals. That is not to say I do not care about the safety and protection of those other animals, but the information needed for this paper was abundant for the antelopes and very limited for the other species. If at any point the other species on the ranches became “endangered,” than my recommendations in this paper would be the same when applied to the other animals.<sup>3</sup>

This paper will address four topics: the legality of hunting these three species, the ethical<sup>4</sup> nature behind hunting the species, the need for exemptions<sup>5</sup> to not be interrupted during these economic times since the hunting of these animals is part of a billion dollar industry in Texas, and lastly, my suggestions on how to handle the public policy aspect of this dilemma going forward.

## Background

As stated above, the three species of antelopes at issue in this debate are the scimitar-horned oryx, addax, and dama gazelle. Over fifty years ago, these three species all inhabited the

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<sup>3</sup> In saying that, I would like to see the same ratio of hunting only 10 percent of the herd applied to all species so the long-term outlook can be preserved for all the animals on the ranches.

<sup>4</sup> The majority of the ethical comment will be my own opinion and Pat Condy's opinion (one of the world's top conservationists), with the opposite ethical side being of Priscilla Feral who is the President of Friends with Animals. I decided against looking at it in a philosophical sense, such as looking at it through an altruistic point of view, as this paper is designed to give a background on the topic and how I personally feel on the topic. I did not want to take away from my passion of this topic by distracting the reader with too many points of view, but rather incorporating my own and Mr. Condy's, and the strongest voice on the other side of the argument, Ms. Feral.

<sup>5</sup> 50 C.F.R. §17.21(h)

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same general region of Northern Africa.<sup>6</sup> From that time period to the current year, however, the number of these species that actually live in their natural, wild habitat has decreased vastly.<sup>7</sup> For example, the scimitar-horned oryx has not been seen in the wild since the mid-1980's.<sup>8</sup> Thus, the scimitar-horned oryx is officially "extinct in the wild."<sup>9</sup> The declines (in numbers) have resulted primarily from habitat loss, uncontrolled killing, and the inadequacy of existing regulatory mechanisms.<sup>10</sup> Both the addax and dama gazelle are listed as "regionally extinct" by the U.S. Fish and Wildlife Service (hereafter "The Service").<sup>11</sup>

To save the species from complete extinction, specifically the scimitar-horned oryx, a Texas rancher by the name of David Bamberger devoted his property in the late-1970's to saving the scimitar-horned oryx.<sup>12</sup> The movement of Mr. Bamberger led to other species of exotic animals being bred and raised on Texas ranches to ensure their population was sustained.<sup>13</sup> As of January 2012, Texas is now home to the most exotic wildlife in the world, with 125 different species calling Texas home.<sup>14</sup> In response to the captive-breeding going on in Texas, and the need to provide an economic incentive for ranchers to continue the preservation of the species of antelopes, the Service published a new regulation, 50 C.F.R. §17.21(h), on September 2, 2005.<sup>15</sup> The new regulation stated as follows:

We are amending 50 C.F.R. §17.21 by adding a new paragraph (h), which will apply to U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle. The

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<sup>6</sup> 70 FR 52310-01, at 52310 (2005).

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>13</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>14</sup> Id.

<sup>15</sup> 70 FR 52310-01, at 52310 (2005).

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provision allows for the take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce of U.S. captive-bred live scimitar-horned oryx, addax, or dama gazelle...and sport-hunted trophies, as long as certain criteria are met.<sup>16</sup>

The reasons behind the rule were the activities that are associated with captive breeding, such as hunting for the endangered antelopes, enhanced the propagation and survival of the endangered antelope.<sup>17</sup> It was stated by the Service that international locales, such as zoos, private owners, researchers, and range country decision makers<sup>18</sup> had recognized that, but for captive breeding, it would be difficult, or in some cases impossible, to restore the species in the wild, particularly for species that have become extinct in the wild.<sup>19</sup> The Service described in the regulation that limited hunting would be allowed to facilitate the captive breeding of the three species, as this would establish both an economic incentive for the ranchers and provide optimal demographics<sup>20</sup> for breeding in the herds.<sup>21</sup> Since the main goal of this regulation was to maintain a substantial stock of each species for future reintroduction into the wild, the Service

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<sup>16</sup> Id. at 52317

<sup>17</sup> Id.

<sup>18</sup> Range country is another term for the country in which the natural habitat is located.

<sup>19</sup> 70 FR 52310-01, at 52315 (2005).

<sup>20</sup> The Service gave an example for the need of demographics and genetic diversity: "A ranch may need to reduce the number of adult males to achieve the necessary sex ratio for establishing a polygamous breeding group and facilitating the typical breeding behavior of the species." Id. The ideal scenario would be for the U.S. Fish and Wildlife Service to set a proper ratio for all ranchers to abide by, and for the ranchers to send monthly reports on the numbers of the herd to ensure the ratio is being met. A random search, or searches, can be conducted by the Service to ensure the numbers are correct. As long as the extra paper work and searches do not cost a substantial amount of money, thus placing more of a burden on our cash-strapped government, I believe this plan would be feasible.

<sup>21</sup> Id.

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believed that sport hunting would reduce the threat of extinction of wild populations by providing alternatives to legal and illegal hunting of wild specimens in range countries.<sup>22</sup>

Furthermore, the Service stated that the regulations would allow for the continued monitoring of these species so that they could maintain their genetic diversity and ensure that the three species would be well represented when they were reintroduced into their range countries.<sup>23</sup> There were already a few ranchers in Texas that were beginning to ship the species to the United Arab Emirates for reintroduction into the wild, and the new regulation was on its way to ensuring the livelihood of the scimitar-horned oryx, addax and dama gazelle.<sup>24</sup>

However, the animal rights activists did not stop in their cause to stop this new regulation as they brought suit<sup>25</sup> to the legality of the rule and whether it violated §10(c) of the Endangered Species Act (hereafter “the Act”).<sup>26</sup> Friends of Animals, the plaintiff in the suit, was granted standing by the District Court of the District of Columbia and won the suit on June 22, 2009.<sup>27</sup> Recently, on January 5, 2012 the Service removed the exemption.<sup>28</sup> The Exotic Wildlife Association, headed by Charley Seale, attempted to mitigate the court ruling by filing for an

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<sup>22</sup> Id. at 52316.

<sup>23</sup> Id. at 52315.

<sup>24</sup> Id.

<sup>25</sup> Friends of Animals v. Salazar, 626 F. Supp. 2d 102 (D.D.C. 2009).

<sup>26</sup> The pertinent section of §10(c) states: “The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application.” 16 U.S.C.A. § 1539 (West). The problem, in the eyes of Friends of Animals, was that the 2005 Ruling did away with the permits and stipulated that anyone claiming benefit of the exception had to keep accurate records for inspection by the Service.

<sup>27</sup> Salazar, 626 F.Supp.2d 102, 120.

<sup>28</sup> 77 FR 431-01, at 431(2012).

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injunction, but the court recently denied the injunction.<sup>29</sup> The exemption was lifted in response to the court order that found that the rule for these three species violated section 10(c) of the Act.<sup>30</sup>

The Service stated the effect of the new rule as follows:

By eliminating the regulating and requiring individuals to submit an application, as described in 50 C.F.R. §17.21(g) or §17.22, requesting authorization to carry out an otherwise prohibited activity, the Service can provide the public a 30-day period to comment on any proposed activities.<sup>31</sup>

To clarify, the Service did not remove the exemption for any reason that would deem the hunting of the species to be unethical or illegal, but rather only removed the exemption because they had no other option as they had to comply with the Court order.<sup>32</sup>

### **I. Legality of Hunting the Scimitar-Horned Oryx, Addax, and Dama Gazelle**

The legal side of this issue will be discussed and analyzed in four different sections: (1) briefly explaining how the U.S. Fish and Wildlife Service is the main authority for the United States for the legality on acts that harm animals, (2) breaking down the 2005 ruling to show the original legality behind the exemption, (3) breaking down the 2012 ruling to show that the Service still believes it is legal to hunt these species in present day, and (4) bringing the two rulings together to show how it is legal to hunt for these “endangered” species.

#### *A. U.S. Fish and Wildlife Service's 2005 and 2012 Rulings*

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<sup>29</sup> Molly Hennessey-Fiske, *Texas Ranchers Fight to Breed, Hunt Endangered Antelope*, L.A. Times, Apr. 3, 2012, <http://www.latimes.com/news/nation/nationnow/la-na-nn-texas-antelope20120403,0,3262019.story>.

<sup>30</sup> 77 FR 431-01, at 431(2012).

<sup>31</sup> *Id.* at 432.

<sup>32</sup> *Id.* at 435.

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As stated above, the U.S. Fish and Wildlife Service have made two rulings in the past, with one being in 2005<sup>33</sup> and 2012.<sup>34</sup> As the main authority in the United States on marine life and animals on land, I feel that the Service would understand the legality of any acts that may harm any species.<sup>35</sup> The Service's mission statements is as follows: The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people.<sup>36</sup> Thus, there is no better authority on the *legal* side of this debate than the Service. Remember, the Courts sided in favor of Friends of Animals because of the failure to provide proper notice to the public in violation of 10(c) of the Act<sup>37</sup> and never decided on whether the actual hunting of these species was indeed legal.

### *i. U.S. Fish and Wildlife 2005 Ruling*<sup>38</sup>

The ultimate reason for the 2005 Ruling was to ensure that the stock of the three antelopes continued to be bred properly and to allow continued research with the ultimate goal being the reintroduction of these animals to their natural habitat.<sup>39</sup> The Service knew that it was an unrealistic goal to take all of the species out of Texas to reintroduce them into the wild for many

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<sup>33</sup> 70 FR 52310-01 (2005).

<sup>34</sup> 77 FR 431-01 (2012).

<sup>35</sup> The Director of the Service is appointed by the President, with advice and consent of Senate, so there is a chance that lobbyists could play a role in the decision making of the Service because the job is predicated on approval by the Senate. <http://www.law.cornell.edu/uscode/text/16/742b>. After looking at the campaign contributions for Senator John Cornyn, a Republican Senator from Texas on the Senate Judiciary Committee, I found no such political donations from Texas ranchers.

<http://www.opensecrets.org/politicians/contrib.php?cycle=2012&cid=N00024852&type=I&newmem=N>. Also, I have found no other inclinations that profit-making interests trump the Service's goal of protecting of animals. Thus, I would agree with my analysis that the Service is best suited to making the decisions that will protect endangered animals.

<sup>36</sup> <http://www.fws.gov/info/pocketguide/fundamentals.html>.

<sup>37</sup> Salazar, 626 F.Supp.2d 102, 120.

<sup>38</sup> 70 FR 52310-01 (2005).

<sup>39</sup> Id.

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reasons: (1) the natural habitats<sup>40</sup> were lost to human settlement and livestock grazing, (2) the uncontrolled killing of these animals in their native lands, and (3) the cost of reintroduction would be too great on the small numbers of reserves in Africa.<sup>41</sup> In my opinion, the Service made the scientifically correct conclusions, based on population facts,<sup>42</sup> that captive breeding had enhanced the population and survival of the three species worldwide by rescuing them from very near extinction and providing the captive stock necessary for reintroduction.<sup>43</sup> Further, the Service stated:

We found that authorizing these activities<sup>44</sup> also enhanced the survival of the species by providing an incentive to continue captive-breeding and genetic management programs, which have prevented the possible extinction of at least one of the species, contributed significantly to the total number of remaining animals of the other two species, and provided found stock for reintroduction.<sup>45</sup>

The Service addressed the idea that allowing sport hunting would increase poaching by concluding that there is no evidence that sport hunting of captive-bred animals increased

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<sup>40</sup> As of 2003, the scimitar-horned oryx were officially listed as “extinct in the wild” as none had been seen since the mid-1980’s. The addax was believed to be regionally extinct, and the dama gazelle, which was the least susceptible to pressures from humans and livestock, was simply listed as “endangered.” Id. at 52310.

<sup>41</sup> Id.

<sup>42</sup> As of 2005, the world’s scimitar-horned oryx population was 100% kept in captive breeding, 71% of the addax were in captive breeding, and 48% of the dama gazelle were in captive breeding. Id. at 52311. A big reason as to why they are so threatened in their natural habitat is because of how valuable their horns are to poachers. *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>43</sup> 70 FR 52310-01, at 52310 (2005).

<sup>44</sup> The activities were allowing the take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce of U.S. captive-bred live scimitar-horned oryx, addax, or dama gazelle...and sport-hunted trophies. Id. at 52317.

<sup>45</sup> Id. at 52312.

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poaching in the wild.<sup>46</sup> Furthermore, there was no evidence that the trophy hunter's ability to shoot these species led to increased hunting in the wild for these same species.<sup>47</sup> The reason sport hunting is allowed on the surplus of the antelopes is to manage the captive herds and to finance the captive-breeding operations.<sup>48</sup> The hunting of these species was only allowed if they were captive-bred and the goal of the hunting for the propagation of the animals<sup>49</sup>, so the Service was not allowing a full-fledge assault on these exotic animals.

The Service addressed the animal rights groups' complaint that the Service was not legally conserving these animals by allowing the hunting of the surplus animals by stating:

In Section 3, the term "conservation" means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measure provided pursuant to this Act are no longer necessary."<sup>50</sup> The definition specifically includes propagation and transplantation as methods that can lead to recovery of listed species, both of which are components of captive breeding of the three antelope species.<sup>51</sup>

*ii. U.S. Fish and Wildlife Ruling 2012*<sup>52</sup>

The ultimate reasoning for the 2012 ruling of the Service was to comply with the court order handed down from the Friends with Animals lawsuit,<sup>53</sup> wherein the Court found that section 10(c) of the Act<sup>54</sup> was violated because the public was not provided an opportunity to

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<sup>46</sup> Id. at 52313

<sup>47</sup> Id.

<sup>48</sup> Id. at 52313

<sup>49</sup> Id.

<sup>50</sup> 16 U.S.C.A. § 1532 (West)

<sup>51</sup> 70 FR 52310-0, at 52316-52317 (2005).

<sup>52</sup> 77 FR 431-01 (2012).

<sup>53</sup> Salazar, 626 F.Supp.2d 102.

<sup>54</sup> 16 U.S.C.A. § 1539 (West).

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comment on activities being carried out with these three antelope species.<sup>55</sup> The elimination of the regulation provided the public with a 30-day period to comment on any proposed activities, such as applying to hunt these species.<sup>56</sup>

The Service continues to believe that captive breeding and hunting of the animals is legal, as long as the same standards are met of carrying out the activities that benefit the survival of the species.<sup>57</sup> The Service continued to defend its position on captive breeding and ensuring that reintroduction was possible by concluding:

While the Service does believe that captive breeding can provide a significant benefit to endangered species, such benefits can only be realized when the breeding program is scientifically based and conducted in a manner that contributes to the continued survival of the species. Reintroduction programs are still key, with or without this regulation, and the Service is hopeful that these species will continue to be a source of stock.<sup>58</sup>

Lastly, the Service still in 2012 believes that scientifically based hunting can provide a strong benefit for the long-term survival of the antelope species.<sup>59</sup> The Service wanted to make it clear that this was not an action on the Service's position on hunting or the successes that have been achieved with the species by allowing the hunting of the species.<sup>60</sup> The Service simply had

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<sup>55</sup> 77 FR 431-01, at 431(2012).

<sup>56</sup> Id. at 432.

<sup>57</sup> Id. at 433.

<sup>58</sup> Id. at 434.

<sup>59</sup> Id. at 435.

<sup>60</sup> Id.

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no other option at the time then to comply with the court order,<sup>61</sup> and while the Texas ranchers tried to file an injunction to stop the court order, it was recently denied.<sup>62</sup>

### *B. Bringing the Two Rulings Together to Form a Legal Basis for Hunting the Animals*

It is clear from the two rulings that the U.S. Fish and Wildlife Service believes that hunting of these animals is legal as long as the end goal is furthering the reintroduction of the animals into their natural habitat.<sup>63</sup> I would tend to think that this would be a government entity that would be the most inclined to ensure the safety of all “endangered” animals was the top priority.<sup>64</sup> This is the same government entity that defines what animals are on the “endangered” species list and the same entity that has in their mission statement that their goal is to conserve and protect wildlife for the benefit of the American people. Further, the Service concluded in the 2012 ruling<sup>65</sup> that:

The Service has the authority to regulate when an individual attempt to carry out an activity that is otherwise prohibited under the Act, such as transport in interstate or foreign commerce in the course of a commercial activity, import or export, or take, that the Service has a mandate to regulate the activity.<sup>66</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> Molly Hennessey-Fiske, *Texas Ranchers Fight to Breed, Hunt Endangered Antelope*, L.A. Times, Apr. 3, 2012, <http://www.latimes.com/news/nation/nationnow/la-na-nn-texas-antelope20120403,0,3262019.story>.

<sup>63</sup> 70 FR 52310-01 (2005) and 77 FR 31-01 (2012).

<sup>64</sup> Friends of Animals have stated on multiple issues that the U.S. Fish and Wildlife Service has failed at their job of protecting animals. <http://www.friendsofanimals.org>. The Service, in my opinion, looks at the long-term survival of animals and what best suits different species. Friends of Animals would never want an animal harmed under any circumstances. Thus, there will times when the Service has to make a tough decision that animal rights groups will not agree with, such as the one discussed at length in this paper.

<sup>65</sup> 77 FR 431-01 (2012).

<sup>66</sup> *Id.* at 434.

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In my eyes, the legal debate is already settled on this matter after reading both rulings and understanding that the main authority on what is legal in regards to acts against animals falls on the shoulders of the U.S. Fish and Wildlife Service. To be specific, Congress would be the rule-making body that would hand down the laws that would later be punished, but the U.S. Fish and Wildlife was afforded the right by the Department of the Interior to set regulations to prohibit the harm of all animals.<sup>67</sup> Priscilla Feral<sup>68</sup>, who will be discussed in the next section, merely brings up an ethical debate regarding these animals. Hunting<sup>69</sup> throughout the country is legal, and while this specific instance involved the hunting of actually “endangered” species<sup>70</sup>, the Service is the ultimate authority in my eyes on the legality of it and if they believe that this is legal if done right, then I will trust their judgment on this issue. Whether or not my lack of ultimate compassion<sup>71</sup> for animals is clouding my judgment in terms of this legal “debate” is something I will never be able to answer, but I do understand that there are people who make these decisions for a living and I would like to believe I can trust their judgment<sup>72</sup> on such a tumultuous topic.

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<sup>67</sup> <http://www.law.cornell.edu/uscode/text/16/742b>.

<sup>68</sup> President of Friends of Animals. *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>69</sup> The Services position on hunting and conservation in 2005 (and unchanged in 2012): “Hunting has a long history of contributing to conservation in the United States. The Service acknowledges that wildlife populations and habitats have been sustained through the financial contributions of hunters. The proposed rule authorizes the taking of individual animals, but only if the purpose of the taking contributes to increasing or sustaining captive antelope numbers or to potential reintroduction to range countries. This approach to management has caused captive-bred specimens to proliferate, thus contributing to their propagation and increasing their life chances of survival.” 70 FR 52310-01, at 52314 (2005).

<sup>70</sup> Endangered and Threatened Wildlife and Plants; Final Rule To List the Scimitar-Horned Oryx, Addax, and Dama Gazelle as Endangered, 70 FR 52319-01 (2005).

<sup>71</sup> I just want to reiterate that this is not to mean that I do not care at all about animals because that is not even close to the case. I am merely saying that animal rights are not a high priority on my “issues I would like to see resolved” list.

<sup>72</sup> From the 2005 Ruling, and which was never negated by the 2012 ruling: “Based on the best available scientific information and comments received from peer reviewers, non-government organizations, and the public, we have determined that U.S. operations that breed (the three

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## II. Ethical Nature of Hunting the Scimitar-Horned Oryx, Addax and Dama Gazelle

We all have a different moral and ethical viewpoint in various facets of life, whether it be animal rights, abortion, war, gay marriage, and other important societal issues. I will listen to many sides of an argument before making my decision on an issue while still being true to myself in my final decision in a matter. With hot button issues I tend to be non-confrontational because there is always that one person who cares a little too deeply about a topic and I do not want to feel the wrath of someone where I do not necessarily have a horse in the race. I may think a different point of view is wrong, but I will never make the person feel like an idiot for feeling the way they do because I know how complicated it can be for someone arriving at their own ethical decision. The life experience we have is usually the makeup for our ethical decisions, whether they are positive or negative. Many of my own have been formed through my twenty-three years of life experience on this planet, and whether my own morals are right or wrong are for me to ultimately decide. Most people, I think, would look at my decisions in my life and deem them to be on par with the vast majority, but many would notice that there is a lack of extremism in all my decisions. If there is one thing I hold true is that I am a rationale person who does not get swept up into emotions and throw my ideas into other people's faces. I bring

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species) have already contributed significantly to the propagation or survival of the three antelope species. Because of the need to facilitate the continued captive breeding of these species in private ranches and zoos, this rule is an appropriate regulatory management provision for (the three species) captive-bred in the United States. The probable direct and indirect effects of this rule will facilitate activities associated with captive breeding and thus contribute to the propagation and survival of the species. The rule will not, directly or indirectly, conflict with any known program intended to enhance the survival of populations in the wild.” 70 FR 52310-01, at 52316 (2005). This is a conclusion that was based on extensive research and opinions outlaid by both sides of the issue. After all of the research conducted for this paper I feel confident that the U.S. Fish and Wildlife Service has every reason to put the welfare of animals above all other considerations.

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this up because I have always felt that groups such as PETA, and other animal rights groups, are too extreme for me and I believe this has shaped part of moral and ethical makeup for animal rights.

I think the work animal rights groups perform as a whole is outstanding and I would never take that away from them. However, when you purposefully go out of your way to be too extreme on issues it rubs me the wrong way.<sup>73</sup> I know it is ironic that an animal rights entity that does so much good could rub someone the wrong way when it comes to animal rights, but as I said I feel their ways are too far and beyond my own decision making in life.

In this section of the paper, I am going to discuss my own opinion of why I believe it is ethical to hunt these endangered species, discuss Priscilla Feral's<sup>74</sup> point-of-view, discuss Pat Condy's<sup>75</sup> point-of-view and then intertwine all of them into a conclusion of the ethical debate.

### A. *Own Point-of-View*

The reason I selected this topic in the beginning was because of a friend, who knew I was taking Animal Law, told me that "60 Minutes"<sup>76</sup> had produced a spot on their broadcast about

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<sup>73</sup> The National Animal Interest Alliance, based out of Portland, OR, gave a perfect example of extremism by animal rights groups. The NAIA, an animal rights group, condemned the actions of "extremists" who "sent a warning to animal researchers in the form of letters rigged with concealed razor blades." The article goes on to further describe other actions: "Just days before these letters arrived animal extremists firebombed vehicles at a Rhode Island fur store, vandalized a University laboratory in Washington and a McDonalds restaurant in NY. Almost three years ago to the day, they caused \$12 million in damage to a Vail Colorado ski resort, supposedly to save lynx habitat, and in between these events they committed a staggering number of violent acts that can only be classified as hate crimes: they issued death threats to fur farmers and research scientists; chained a 62 year old woman to a fence; destroyed life-saving research; burned agricultural coops to the ground; destroyed fur farms, releasing mink that were later found dead on the roads; vandalized fast food restaurants in the US and burned one to the ground in Europe." Patti Strand, *NAIA Condemns Violence, Challenges Animal Rights Leaders to Do the Same*, NAIA Library, Nov. 1, 2001, <http://www.naiaonline.org/articles/article/naia-condemns-violence-challenges-animal-rights-leaders-to-do-the-same>.

<sup>74</sup> President of Friends of Animals

<sup>75</sup> Leading conservationist in the world. *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

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the hunting of “endangered” species in Texas. Without knowing much about it, it sounded like something that would absolutely interest me because I was very confused at how this was even allowed. I am confident that most people had the same reaction of being perplexed and this made me believe that I would be on the side defending the animal rights groups because just hearing the words “endangered” and hunting in the same sentence made me upset. However, after watching the “60 Minutes” broadcast and reading the two rulings handed down by the Service<sup>77</sup> I realized that for the long-term success of these species that hunting was essential to the cause.<sup>78</sup>

I believe that if an entire species can be saved for many years to come by hunting the “surplus”<sup>79</sup> animals, and that it is backed up by scientific data, then that is the road we should take to save these animals. In my opinion, the scientific data is overwhelming in favor of it being ethical.<sup>80</sup> The mere fact that a scimitar-horned oryx has not been seen in its natural habitat since the *mid-1980's* is startling enough.<sup>81</sup> To say that the captive breeding of these animals has not been essential to the survival of these species is just being stubborn. Even stating that the animals are “endangered” still is tough to say. I can without a doubt concede that these three species are “endangered” in their natural habitat, but in terms of worldwide population it would be a stretch for me to say that these animals are still “endangered.”

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<sup>76</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>77</sup> 70 FR 52310-01 (2005) and 77 FR 431-01 (2012).

<sup>78</sup> 70 FR 52310-01, at 52314 (2005).

<sup>79</sup> *Id.* at 52315.

<sup>80</sup> There are differing opinions of how many of the three species are in captivity worldwide. In the 2012 ruling it was stated: “The Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program estimated that there are 4,000-5,000 scimitar-horned oryx, 1500 addax, and 750 dama gazelle in captivity worldwide. Based on a 2010 census of its members, the Exotic Wildlife Association (EWA) estimates there are 11,032 scimitar-horned oryx, 5112 addax, and 894 dama gazelle on EWA member ranches.” 77 FR 431-01, at 431 (2012).

<sup>81</sup> 70 FR 52310-01, at 52310 (2005).

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Furthermore, the hunting of these animals has led to the beginning stages of reintroduction into the wild by sending over each of the three species to reserves in the United Arab Emirates<sup>82</sup> and the actual opening of reserves in Africa from the profits that were secured from the hunting of the animals.<sup>83</sup> I have always believed in the greater good for society in my decision making, and if entire species can survive and be reintroduced into the wild because we allow a very small portion of the herd to be hunted, I believe it is the right decision to make.

### *B. Priscilla Feral's Point-of-View*

Priscilla Feral, the President of "Friends of Animals", has been at the forefront against the Exotic Wildlife Association and other Texas ranchers for the past seven years<sup>84</sup> to try and stop the hunters from shooting the antelope.<sup>85</sup> She filed suit<sup>86</sup>, on behalf of Friends of Animals, against the Service and another government entity, and on June 22, 2009 the court ruled in her favor.<sup>87</sup> The following is a quick transcript from her interview on "60 Minutes" with Lara Logan.<sup>88</sup>

Feral: They're breeding these antelopes, they're selling the antelopes, and they're killing the antelopes. And they're calling it conserving them. They are saying it's an act of conservation and that's lunacy.

Logan: You would rather they did not exist in Texas at all?

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<sup>82</sup> *Id.* at 52315. The reserves are used to acclimate the antelopes back into an environment similar to their natural habitat. The reserves serve as middle-man because it is a temporary home for the antelopes. The goal is to eventually transfer the antelopes from the reserves back to their natural habitat of Northern Africa.

<sup>83</sup> Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

<sup>84</sup> The seven years is at the start of the 2005 Ruling by the U.S. Fish and Wildlife Service.

<sup>85</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>86</sup> *Salazar*, 626 F.Supp.2d 102.

<sup>87</sup> *Id.* at 120.

<sup>88</sup> Chief Foreign Affairs Correspondent for "60 Minutes." *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

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Feral: I don't want to see them on hunting ranches. I don't want to see them dismembered. I don't want to see their value in body parts. I think it's obscene. I don't think you create a life to shoot it.

Logan: So, if the animals exist only to be hunted...

Feral: Right...

Logan: ...you would rather they not exist at all?

Feral: Not in Texas, no.<sup>89</sup>

While Feral strayed from the question, which I will get to later, there is a clear passion for wanting these animals to be in their natural habitat and not hunted. In an article from the Houston Chronicle describing the recent events,<sup>90</sup> it said that Feral would rather see the species go extinct than have any one of them be hunted.<sup>91</sup> When asked about conservation of the antelopes on the Texas ranchers, Feral stated:

While ranchers and hunters might think that's tantamount to conservation, we think that's a hoax. They're breeding those antelope, they're selling them and killing them and calling it conservation. You live a year or two before your head's blown off—the Endangered Species Act<sup>92</sup> wasn't created for that.<sup>93</sup>

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<sup>89</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>90</sup> The court order and the ruling by the Service.

<sup>91</sup> Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

<sup>92</sup> This is in contrast to what the U.S. Fish and Wildlife Service stated they believed conservation was in the 2005 ruling. To quote again: "In Section 3, the term "conservation" means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measure provided pursuant to this Act are no longer necessary." The definition specifically includes propagation and transplantation as methods that can lead to recovery of listed species, both of which are components of captive breeding of the three antelope species. 70 FR 52310-01, at 52316-52317 (2005). It should be noted that this is not just Ms. Feral's ethical viewpoint, but she also believes that the correct reading of the Endangered Species Act does not permit hunting of endangered species.

<sup>93</sup> Molly Hennessey-Fiske, *Texas Ranchers Fight to Breed, Hunt Endangered Antelope*, L.A. Times, Apr. 3, 2012, <http://www.latimes.com/news/nation/nationnow/la-na-nn-texas-antelope20120403,0,3262019.story>.

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Feral, as part of “Friends of Animals”, has made an effort in reintroducing the species into the wild by bringing 150 of the species to two reserves in Senegal.<sup>94</sup> As I have shown from these small interviews and transcripts, Feral is on the opposite side of this ethical discussion than me.

### C. Pat Condry's Point-of-View<sup>95</sup>

The “60 Minutes” broadcast that I watched introduced me to a man by the name of Pat Condry, and I knew immediately that I would be able to use him as my third opinion for the ethical debate on hunting these endangered species. As someone who raises and breeds rare and endangered species<sup>96</sup>, and has dedicated<sup>97</sup> most of his life to saving animals, I feel that Condry has a great grasp on what should be done in regards to these animals. Here is the transcript from the “60 Minutes” interview describing Condry’s feeling towards the captive antelopes being hunted:

Logan: Do you think that Texas ranches are saving animals from extinction?

Condry: There's no question about it that they are.

Logan: What gives you the confidence to say what you're saying?

Condry: What gives me the confidence is when you look at the numbers, the animal numbers, okay, and you see that they're not declining, that they're either stable or growing.

Logan: The numbers, you can't argue with that?

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<sup>94</sup> Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

<sup>95</sup> Pat Condry is the Executive Director of Fossil Rim Wildlife Center in Glen Rose, Texas and is viewed as one of the top conservationists in the world. *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>96</sup> Condry raises and breeds these animals at the Fossil Rim Wildlife Center. This is a center that tourists can visit and play with the animals. I make this stipulation because the Exotic Wildlife Association ranch owned by Charley Seale is one used for hunting the animals, whereas the Fossil Rim Wildlife Center is mainly for tourists to come interact with exotic animals.

<sup>97</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

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Condy: When you're talking about conservation, it's the numbers that are the bottom line.

Condy: Put the hunting aspect to one side, and take a 50,000 foot view over this, this resource of a species that is extinct in the wild is going to disappear now from Texas, slowly but surely.<sup>98</sup>

Logan: So who's winning the day here?

Condy: I don't think anybody's winning the day. One thing is for sure, they are losing it. Those species are losing it.<sup>99</sup>

There are many ways to look at this argument of hunting the “endangered” antelope, but it is telling to me that a man who is so dedicated to saving the lives of animals would side with the people who believe it is right to hunt these antelope. In no way am I claiming that his belief is dispositive and the debate should end because someone who preserves the livelihood of animals says that hunting the “endangered” species and keeping them in captivity has saved them from becoming extinct. I just find it influential that a man of that magnitude and someone who is a top conservationist would favor the “evil”<sup>100</sup> side.

### *D. Intertwining All of the Views*

As I stated above, I felt it was good to have two opinions from opposite spectrums and an opinion from an unbiased party. Since I agree with Condy's remarks, I want to address Feral's remarks. It is beyond me that Feral would rather have the species extinct than to have even one

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<sup>98</sup> This line was left in so as to give his point of view on the recent 2012 ruling and the impact it will have on the antelope. I felt it still hits home to the ethical side of the argument. To go further into his argument on the 2012 ruling, he stated for the Houston Chronicle: “In this instance, Texas ranchers have done an astounding job of rebuilding three species of African antelope, one of which [scimitar-horned oryx] is extinct in the wild.” Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

<sup>99</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>100</sup> Evil being relative to the animal rights side, not my own side.

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hunted to save an entire species.<sup>101</sup> She bashes the Texas ranches for allowing the hunting of the antelopes and then says that she wishes the antelopes were extinct so that none of them are hunted. Feral would first want the animals in their natural habitat, but because she cannot fulfill this goal at the moment, she would rather have them all go extinct than have another one be shot. I just cannot grasp the irony and hypocritical nature of that comment. She dedicates her life to fighting for animal rights and wants to ensure that all animals, small or large, is protected from day-to-day. She fights for seven years to “save” the animals from being hunted and, according to the Friends of Animals website,<sup>102</sup> is an activist in a substantial amount of issues. Yet, Feral can sit there and say that the same animals she fights so hard to protect, she would rather see *extinct* than for even one to be hunted. In my eyes, at least the Texas ranchers want the species to be prominently alive on the ranches and free to roam as they will. I understand that a small number of their population will never get to freely roam until their natural death, but the herds as a whole can survive for generations because of a select few who meet an earlier fate.

If it were not for the captive breeding of these antelopes, there is a great chance that one of the species would be extinct and the other two would be very close to being extinct.<sup>103</sup> Once again, the greater good of the animals was for the species to survive long-term and not to have any of them become extinct. That goal was accomplished through the hands of the very people she despises. To me it's analogous to someone saving a business from near bankruptcy, bringing it back to prominence and then an employee, who would have lost their job if not for the knight

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<sup>101</sup> Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

<sup>102</sup> <http://www.friendsofanimals.org/>.

<sup>103</sup> 70 FR 52310-01, at 52312 (2005).

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in shining armor saving the day, getting upset at that person for all of their hard work because they are making money on a legal, but ethically questionable business model.

Further, if these hunts were made extremely easy by the owners of the ranchers I would have more hesitation at the ethical nature of the hunting. However, as the broadcast<sup>104</sup> showed us and as both rulings<sup>105</sup> have stipulated, the hunting is not easy. A person is only allowed to go on the property and hunt for these animals as if they were in the wild.<sup>106</sup> The animal is not being shoved directly in the hunter's face making for easy shooting. The hunt is fair for the animal as well.<sup>107</sup>

In addition, Feral wants the species to be moved from the Texas ranches immediately to reserves in Africa to be reintroduced to the wild.<sup>108</sup> The problem with that is there are limited amount of reserves in Africa for these animals to be placed into.<sup>109</sup> In a perfect world, these animals would not have to live in Texas on ranches to be hunted, but the world we live in today allows these species the greatest chance at survival on the ranches. In my mind I have this image of Feral believing the antelopes should be roaming around the African terrain like in *The Lion King*.<sup>110</sup> However, this is not a children's animated movie, rather the real world where the natural habitat of these species are stricken with deadly poachers and unfit terrain for the entire

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<sup>104</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>105</sup> 70 FR 52310-01 (2005) and 77 FR 431-01 (2012).

<sup>106</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>107</sup> I understand the irony in saying a hunt is "fair." However, this is not shooting fish in a barrel or holding the animal down so they can be shot. This is just normal hunting procedure as if you were in the forest shooting at deer or wild turkey.

<sup>108</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>109</sup> The Service's comment on the reserve problem was: "Currently, we are aware that there are only a limited number of *in situ* (in position) conservation programs available for these species." 77 FR 431-01, at 435 (2012).

<sup>110</sup> After watching the beginning of the movie on YouTube to see if any antelopes were in the opening scene, I noticed there were actual Addax antelopes shown multiple times.

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herd. It is impossible for the number<sup>111</sup> of animals, kept alive because of the captive breeding and hunting ventures, to be altogether introduced into the wild all at once. There are simply not enough resources or reserved to acclimate the species back into the wild. In ten years this may be a possibility, but the present day would present an impossibility for this to happen.

Combining my belief that the hunting is ethical, along with Condry's remarks on the subject, makes me truly believe that the end goal of long-term survival can be met in a morally and ethically correct way of hunting a portion of the herd in a "fair" hunting setting for the species. I would be more hesitant if the Texas ranches used inhumane ways to kill these animals for money, such as a version of antelope "cock-fighting"<sup>112</sup>, but since the animals are being hunted like any other animal that is legal to hunt I do not have an issue with it.<sup>113</sup> With the future of the species my main priority in this analysis, the ethical dilemma is a no-brainer for me.

### III. Economic Factor of Hunting the Animals

The survival of these animals does not happen without the hunters, plain and simple. The Service has made it clear<sup>114</sup> that without the hunters the animals are likely extinct.<sup>115</sup> Even with all of these information and data backing up the success of the captive breeding of these species,

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<sup>111</sup> Based on a 2010 census of its members, the Exotic Wildlife Association (EWA) estimates there are 11,032 scimitar-horned oryx, 5112 addax, and 894 dama gazelle on EWA member ranches. This is solely just on the EWA's ranches and not a worldwide estimate. *Id.* at 431.

<sup>112</sup> This scenario is completely unrealistic since antelopes likely are not predisposed to be that aggressive, but in the 60 Minutes broadcast it was discussed that the scimitar-horned oryx can kill a lion. This lends me to believe there is a slight possibility they would fight.

<sup>113</sup> Some people would say that hunting the animals with high-powered rifles with long-range sites would be an unfair way to hunt the animals and I would tend to agree. However, unless a hunting law was passed stipulating only cross-bows or lower-powered rifles were to be used in all hunting in Texas, I know that the use of those high-powered rifles is legal.

<sup>114</sup> "The Service acknowledges that wildlife populations and habitats have been sustained through the financial contribution of hunters." 70 FR 52310-01, at 52314 (2005).

<sup>115</sup> Just think about that sentence. The *hunters* are the ones that kept the animals alive. Under normal circumstances of hunting this would seem to be an oxymoron. How can a hunter, someone who kills animals, sustain them? This is what makes this debate so intriguing, that something can seem so wrong, yet is likely the best alternative for these species to survive.

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the Service could not come up with an alternative then to simply adhere to the court order<sup>116</sup> and remove the exemption.<sup>117</sup> I personally feel that this is just an unnecessary hurdle for ranchers to get through because both the ranchers and the Service seem to be on the same page when it comes to hunting for the species as long as the means to the end of the hunting is for the eventual reintroduction of these animals to their natural habitat.<sup>118</sup> The final order of the court was June of 2009<sup>119</sup> and the final ruling of the Service was January of 2012.<sup>120</sup> I feel with enough effort the Service could have found a way to both comply with the court order and ensured that unnecessary regulations were not put on the ranchers that had spent an incredible amount of hard work and money to sustain the species.

As stated in the “60 Minutes” broadcast, exotic wildlife is a billion dollar industry in the state of Texas.<sup>121</sup> This has led to over 14,000 jobs created as a result of all the exotic wildlife.<sup>122</sup> The unfortunate removal of the exemption will undoubtedly destroy a substantial portion of this industry in economic times that we can ill afford to hurt such successful industries. I could understand curtailing an industry if the way they were making money was heinous and the public would not improve. However, the removal of the exemption is interrupting an industry that even the Service<sup>123</sup> deems to be crucial for the survival of these animals.<sup>124</sup>

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<sup>116</sup> Salazar, 626 F.Supp.2d 102, 120.

<sup>117</sup> 77 FR 431-01, at 431 (2012).

<sup>118</sup> 70 FR 52310-01 (2005) and 77 FR 431-01 (2012).

<sup>119</sup> Salazar, 626 F.Supp.2d 102, 120.

<sup>120</sup> 77 FR 431-01, at 431 (2012).

<sup>121</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>122</sup> Id.

<sup>123</sup> The killing of a living creature for an economic advantage is a tricky subject. In my opinion, each person is entitled to their own viewpoint on the issue. As stated multiple times in this paper, if a species is being benefited from the killing of a few to save the entire species I do not have a problem with the scenario. I want to make it clear that I do not support the same scenario if it was used to reduce the number of certain ethnicities or races of humans as was brought up in class. I do not view animals and humans on par with each other as some people do. I do not feel

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The troubling part of the removal of the exemption is the Service's acknowledgment of an economic impact, but trying to rationalize it.<sup>125</sup> The Service described the outlook as:

While the elimination of 50 C.F.R. §17.21(h) has been perceived as having a significant economic impact on some ranches, it has been determined that the benefits of this action justify its costs by imposing the least burden on society and identifying specific avenues for carrying out otherwise prohibited activities.<sup>126</sup>

Essentially what the Service<sup>127</sup> is saying is that notifying the public of each application they receive for the hunting outweighs the millions of dollars that will be lost and the thousands of jobs that will be lost because of this regulation. I do not need to cite to anything to explain that our economy is not great right now and any successful industry should not be hurt by a needless public notification waiting period. The ranchers may still be able to apply<sup>128</sup> for permits to continue the hunting, but according to Charley Seale<sup>129</sup> the permits are hard<sup>130</sup> to get.<sup>131</sup>

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those people are wrong for feeling like animals and humans should be treated the same, but I just tend not to agree with the sentiment. If an economic advantage occurred where species of animals were becoming extinct because of the economic advantage, then I would have a problem with the action that was occurring. However, as is the case here, all parties (hunters, ranchers and antelopes) can all gain from the action taking place and I do not have a problem with everyone benefitting from the hunting.

<sup>124</sup> 70 FR 52310-01 (2005).

<sup>125</sup> 77 FR 431-01, at 434 (2012).

<sup>126</sup> Id.

<sup>127</sup> The removal of the exemption has also brought about application fees for applying for the permit, which I declined to delve further into because the fee is a onetime \$100 to \$200 every 1-5 years, depending on the type of permit and authorization, when conducting certain prohibited activities. The ranchers complain in the 2012 ruling that this is just another burden, but even I will side with the Service in saying this is a very minimal cost in the grand scheme of their business.

<sup>128</sup> The Service, in the 2012 ruling, stated: "Provided that the ranch, zoo, or individual is carrying out activities that benefit or enhance the propagation of survival of the species, as was previously required by 50 C.F.R. §17.21(h), otherwise prohibited activities, including limited hunting for herd management purposes, can be authorized." 77 FR 431-01, at 433 (2012).

<sup>129</sup> Executive Director of the Exotic Wildlife Association. *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

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Furthermore, in the 60 Minutes broadcast Seale described how the value of the antelopes has decreased since the announcement of the removal of the regulation:

Seale: Just since the announcement of that rule the value of those animals has probably dropped in half. You've got to understand, I'm a rancher to make a profit, just like any business.

Logan: How does this rule change affect that?

Seale: I will say that in five years you'll see half the numbers that you see today.

And I would venture to guess in 10 years they'll be virtually none of 'em left.<sup>132</sup>

The Service has corroborated that notion in their 2012 ruling.<sup>133</sup> Lastly, Condy stated in the Houston Chronicle article that the government cannot save a species on its own because of the resources that are needed, but rather the private sector needs to be involved.<sup>134</sup>

The Federal government is not in the position at this moment to help fund the reserves in Africa. While society has deemed it okay to provide funding for prisoners, hospitals, agriculture, etc., all of those problems involve the survival of humans. In better economic times the Federal government should be the ones creating the reserves and ensuring the protection of the endangered antelopes, but it will be a hard topic to sell to the general public that a country

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<sup>130</sup> I looked into the discrepancy of the permit process, with the Service stating it is not difficult and Seale stating that only 10 percent of the ranchers would receive them, and could not find any information on how difficult it is to be granted a permit. The permit process seems straightforward, and Seale could have been exaggerating for effect.

<http://www.fws.gov/permits/instructions/ObtainPermit.html>.

<sup>131</sup> In the Houston Chronicle article, Seale envisions less than 10 percent of the ranchers will receive them. Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

<sup>132</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>133</sup> "The Service does recognize, however, that there may be an economic impact if people believe that the elimination of this regulation changes the status of species and therefore creates a change in activities that may be authorized." 77 FR 431-01, at 433 (2012).

<sup>134</sup> Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

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already so far in debt is going to need more funding to create multiple reserves for endangered antelopes.

In addition, the reserves that were being funded by the profit made from hunting will now have trouble gaining funding and any future reserves may never be actually built.<sup>135</sup> The private sector, as Condly spoke about, was the driving force behind the survival of these animals and the reintroduction of them in the wild. Without the constant cash flow from the hunters coming in to enhance the species survival, the reserves will be the first ones to feel the burden in my opinion. The business will have to make cutbacks and all of the money the ranches receive will go to their domestic work.<sup>136</sup> The surplus of money to create reserves and to maintain the ones they currently operate will simply not be there if the exemption is removed for a long period of time. The ultimate goal, as stated multiple times, is to ensure the survival of the species and to reintroduce the stock into the wild.<sup>137</sup> Without any reserves to acclimate the animals back into their African habitat it will be extremely difficult to fulfill that goal. The over thirty years of hard work to keep these species alive has the very real possibility of going up in flames.<sup>138</sup>

The court order needed to be followed or else more problems likely would have occurred and I can respect that part of the problem. However, as shown above there is going to be a clear negative economic impact that could be avoided with some tinkering of the process. The red tape

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<sup>135</sup> 70 FR 52310-01, at 52312 (2005).

<sup>136</sup> This is all my own analysis of how I believe it would work out. It makes way more sense to me that these ranchers are more concerned with their profits, as Seale stated, then to make sure the species ends up in Africa.

<sup>137</sup> *Id.* at 52310.

<sup>138</sup> Both Charley Seale and Pat Condly have stated in both 60 Minutes and the Houston Chronicle article that without the funding coming in from hunting that there is a real possibility the population of the species, specifically of the scimitar-horned oryx, will drop drastically. *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012). Tony Freemantle, *Rule Meant to Save Exotic Antelopes Will Hurt Species, Ranchers Say*, Houston Chronicle, Mar. 30, 2012, <http://www.chron.com/news/houston-texas/article/Rule-meant-to-save-exotic-antelope-will-hurt-3448655.php#page-1>.

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involved in a large government entity is something that may be too large to overcome in this situation, but millions of dollars and people's jobs are being sacrificed for a *notification*<sup>139</sup> process. The notification process is likely just going to result in a smear campaign once the animal rights groups get their hands on the public information.<sup>140</sup>

We would be naïve to think that there would not be a substantial increase in protests and added trouble once the permit applications are published. The First Amendment affords anyone the right to protest as they feel necessary, but we cannot turn a blind eye to overwhelming economic data that tells us of a likely negative outcome because of the removal of the exemption.

#### IV. Policy Changes

I believe through the first three parts of the analysis that I have outlined the pressing issues in great detail with scientific data, industry leader's opinions, and my own analysis of the situation in all facets. There are two important issues that should be addressed in order to maximize the effort to save the antelope from long-term extinction and to save the industry of hunting these animals from being crippled. The first issue is to remove these species from the

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<sup>139</sup> I understand that I am being critical of the same government agency that I previously gave deferential treatment, but the topics involved are two very different ones. I gave deferential treatment to the Service as the entity that is best able to address the protection and needs for endangered species. I am criticizing the Service because a notification process is an unnecessary feature at this point in time for an industry that is both successful and following the criteria outlined by the Act that promotes the survival of the species. I wish the Service had postponed the 2012 ruling to allow the hearing of whether or not the antelopes should be on the endangered species list. My issue is the 2012 ruling was made because of a *notification* process and not because of the overall goal of protecting the animals. I hope this clears up the discrepancy of giving deferential treatment in one instance, but criticizing the same agency in another instance.

<sup>140</sup> The Service acknowledges the possibility of harassment: "Information that is made available through the public comment process is intended to provide the public an understanding of the activities being proposed. It is not intended to provide anyone with the opportunity to harass directly or indirectly, or to interfere in lawfully conducted activities." 77 FR 431-01, at 436 (2012).

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endangered list, and the second issue is compromising with the animal rights activists to send a certain percentage of the species to reserves each year. The second issue comes with the notion that more reserves will be maintained and built using the profits from hunters. A third issue was going to be foreign relations with the range countries, but from the 2012 ruling it seems that the obstacles<sup>141</sup> in dealing with range countries is relatively tough.<sup>142</sup>

The species that once seemed on their way to extinction are now thriving in captive breeding, whether it is in Texas or worldwide.<sup>143</sup> The Service has received two petitions to remove these species from the Endangered Species List, but they declined to decide on the petitions until after removing the exemption.<sup>144</sup> The time spent between the court holding for Friends of Animals<sup>145</sup> and the final ruling by the Service was two years and a half years.<sup>146</sup> I do not believe that taking an extra few months to decide on whether these animals deserve to be on the endangered species list would have been a big deal. Considering that exotic wildlife in Texas is a billion dollar industry<sup>147</sup> and hunting of those species makes up a substantial portion, I deem it in the Service's best interest to look at all possibilities before setting a possibly forest fire to the hunting industry.

Further, the animals are no longer in danger of being extinct worldwide.<sup>148</sup> In their natural habitat they are extinct or close to it, but anyone who is over the age of five can understand that over ten thousand of a species is much greater than zero of that same species.

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<sup>141</sup> The obstacles can range anywhere from the poor upkeep of the natural habitat to the general safety of the species that will be neglected by the range countries.

<sup>142</sup> 77 FR 431-01, at 435 (2012).

<sup>143</sup> Population numbers. *Id.* at 431.

<sup>144</sup> *Id.* at 434.

<sup>145</sup> *Salazar*, 626 F.Supp.2d 102, 120.

<sup>146</sup> June 22, 2009 to January 5, 2012

<sup>147</sup> *60 Minutes: Big Game Hunting* (CBS television broadcast Jan. 29, 2012).

<sup>148</sup> Population numbers. 77 FR 431-01, at 431 (2012).

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Removing these animals from the Endangered Species List will allow for complete control of these antelopes and what I envision will be an even more successful industry.<sup>149</sup> To ensure that these antelopes will be treated the same as were before the removal of the exemption a buffer period should be set in place to monitor the progress of taking the species off the Endangered Species List. If the ranchers act in accordance with the probationary period, just as they have since the original ruling in 2005, then the period ends and the monitoring of the ranchers ceases. With unfettered control over the industry it is my inclination that more reserves will be made for the antelopes because of the increased population that will then occur, and the possible reintroduction of more and more species can jumpstart.<sup>150</sup>

The building of more reserves goes hand-in-hand with the issues of removing the species from the Endangered Species List. The animal rights activists would likely be in an uproar if the first issue occurred, so the best way to compromise at first would be to build as many reserves as can be afforded and start transferring over the species to be acclimated with their natural habitat. I do not envision this would completely sit well with the animal rights activists as the species would still be hunted, but any positivity that can be shown towards the animal rights groups is good. The animal rights groups' passion and effort is something to be commended, and that is

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<sup>149</sup> I am suggesting to the Service of how to rule because the criteria for being an "endangered species" does not make sense when there are thousands of antelopes flourishing in Texas, and the only reason they are "endangered" is because there are so few in their natural habitat. It is my view that putting the antelopes back in their natural habitat will only lead to the extinction of the species because the natural habitat is not safe for them. I would love to see all of the antelopes prancing around Northern Africa and living in their natural habitat, but that is not a reality in the near future for the species and the best place for them to be is roaming around on the Texas ranches.

<sup>150</sup> There is also the possibility of the ranchers seeing this as an open season and allowing more animals to be hunted than in the past. After all of the legal work the ranchers would have went through by then, and the possibility that any jump in hunting could make the Service change their mind, I think the ranchers would do the smart thing and just continue as they have since the 2005 ruling.

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why I think compromising as much as possible with them if the species were lifted off the List is good for everyone. It would allow for the ranchers to continue giving back to the animal world with the profits they make through hunting the exotic wildlife, and it is a start in giving the animal rights groups what they want in reintroducing all of the animals into the wild. It is unrealistic with all of the antelopes on the Texas ranches to reintroduce all of them in a short amount of time, but with the help of both parties there could be an increasing population both in Texas to make profits and in the African natural habitat.

### **Conclusion**

This paper was to bring to light an important debate on a successful industry and the organizations that are directly and indirectly hurting the industry. As stated above, it is my contention after looking at both sides of the argument that the hunting of the scimitar-horned oryx, addax, and dama gazelle is both ethical and legal, especially in the dire economic times we currently face as a country. The antelopes, at one time on the verge of extinction, have thrived in their new home on the Texas ranches. A place plush with green and hundreds of acres to roam free is the new, and temporary, home for these species. The eventual reintroduction of these species is the goal, and that goal can only be achieved with the continued exemption allowed by the U.S. Fish and Wildlife Service. The antelopes needed our help for survival, and now the people who are most inclined to save the species, the Service and Friends of Animals, are creating a world where the possible extinction of these antelopes is becoming real. I hope for the sake of millions of dollars, thousands of jobs, and most importantly the survival of the species that both the Service and animal rights groups change their opinion on this issue and help create a better outcome for all parties.