# SYMPOSIUM NOTE 2018: THE MYTH OF HUNTING AS A CONSERVATION TOOL IN THE CROSSHAIRS, FACING EXTINCTION

A full house listened to panelists Annecoos Wiersema, Karen Bradshaw, Michael Harris, and Jonathan Lovvorn investigate the subject of hunting as a conservation tool. The panel, *Hunting as a Conservation Tool? Looking Behind the Rhetoric and Exploring Alternative Approaches* was moderated by Jay Tuchton, Adjunct Professor of Law at the University of Denver and Preserve Manager for the Southern Plains Land Trust.[1] The panel came to a consensus that hunting as a conservation tool is a myth.

The discussion began with Professor Wiersema,[2] who described the current legal framework behind international trophy hunting: the Convention on International Trade in Endangered Species (CITES). Her analysis of CITES focused on the gaps that remain in regulating the import and export of endangered species, such as placing some species on Appendix I, the most restrictive CITES appendix on trade, but putting sub-populations on Appendix II, and allowing exportation of Appendix II species for reasons such as trophies from hunting, or permitting trade in captive-bred species regardless of listing restrictions. The incomplete bans on imports and exports subject endangered species to both trophy hunting and trade in their parts.

Professor Wiersema then discussed the common assertions made about hunting as a conservation tool and why those may not hold water in practice. She listed several assertions including deferring to African range states and breaking the cycle of economic incentives for poaching as some common assertions about the benefits of hunting. She argued that range states do not necessarily want hunting, giving the example of a recently defeated measure ten range states proposed to boost the African lion from Appendix II on CITES to Appendix I, and if deferring to the range states was truly valued, the committee would have passed the measure.[3] In addition, she argued that legal hunting does not disincentivize poaching because that argument assumes that demand does not change and only focuses on the supply side.

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1. *Faculty Page of Jay Tutchton*, U. DENV. STURM C. L., https://www.law.du.edu/faculty-staff/jay-tutchton (last visited Feb. 24, 2018).

2. *Faculty Page of Annecoos (Anna) Wiersema*, U. DENV. STURM C. L., https://www.law.du.edu/faculty-staff/annecoos-wiersema (last visited Feb. 16, 2018).

3. *African Lions Denied Full Protection from International Trade*, MAASAI WILDERNESS CONSERVATION TR. (Oct. 5, 2016), http://maasaiwilderness.org/2016/10/05/african-lions-denied-full-protection-international-trade.

Michael Harris, the Wildlife Law Program Director for Friends of Animals,[4] took a more direct approach to the topic. He began his talk expressing his opinion that hunting as a conservation tool is a myth that is perpetuated by the gun and hunting industries. He argued there were two primary issues with the idea that hunting is a conservation tool. First, he explained that for hunting overseas there was no evidence that hunting permit money that was purportedly funding conservation was getting to the right places; and even if it was, it would only be a drop in the bucket of how much money is needed to prevent poaching and save the animals being poached to extinction. Second, and more importantly, he argued that the fact there is a legal and an illegal market reduces stigma surrounding illegal hunting activities. Further, it creates grey markets and creates opportunities for laundering. This results in indistinguishable illegal and legal trophies and supports illegal activities.

Mr. Harris concluded that the industries supporting the idea of hunting as a conservation tool are steering a "rhetoric ship" but that it is falling apart as people are really starting to look at these policies and the science and economics behind them.

Third, Associate Professor Karen Bradshaw, of the Sandra Day O'Connor College of Law at Arizona State University[5], cited to the well-known case, *Pierson v. Post*[6] to tie her presentation into the theme of hunting. Rather than asking which hunter owns the fox, she asked what if the fox owned either his physical body or the land he was running across. From this, she proposed that animals should be recognized and in fact are already are recognized as able to own property and that we should expand on this legal theory to formalize animal property ownership in trust, managed by humans at an ecosystem level. She argued that animals already own property and have from pre-colonial times, Spanish law which contributes to American common law, and informal property rights in the form of wildlife refuges which are managed to some extent with consideration to animal interests. Additionally, in all states except Minnesota, animals can inherit property via trust and perhaps animals can own intellectual property.[7]

Professor Bradshaw moved on to argue that privatization excluded animal ownership and that we have the power to re-grant property ownership to animals either through a statutory or common law approach. Through the statutory approach, congress could explicitly grant animals the right to own property or select a portion of publically owned land to

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4. *Staff Biography Page*, FRIENDS ANIMALS, https://friendsofanimals.org/meet-our-staff (last visited Feb. 16, 2018).

5. *Faculty Page of Karen Bradshaw*, ARIZ. ST. U., https://isearch.asu.edu/profile/2188921 (last visited Feb. 16, 2018).

6. Pierson v. Post, 3 Cai. R. 175 (N.Y. 1805).

7. Matthew Haag, *Who Owns a Monkey Selfie? Settlement Should Leave Him Smiling*, N.Y. TIMES (Sept. 11, 2017), https://www.nytimes.com/2017/09/11/us/selfie-monkey-lawsuit-settlement.html.

give to animals. The common law approach would use litigation to strengthen animal property rights that already exist and to articulate the outer bounds of those rights. It would then expand these boundaries through untested animal property right claims. While she recognized that this is a controversial proposal and that administration could be complicated, she believes that there is enough science that can inform an administrable standard that could help wildlife, sea creatures, and pets gain rights beyond the rights those animals have now.

Finally, Harvard Law School's Program of Animal Law and Policy Director, Jonathan Lovvorn,[8] yielded his time to allow for questions about the proposals made. In response to a question, however, Professor Lovvorn quickly summarized his argument: structural problems with representation on state wildlife boards has blocked reforms that animal rights activists might want to make. In California, the representation on wildlife boards has started to change and it has resulted in discussions about stopping bear hunting and ending coyote contests. He likened the hunting groups' control over state wildlife policy to putting vegans in charge of state food policy, stating that hunters make up 4-5% of the population while vegans now make up 6% of the population.

Overall, the panelists agreed that as the rhetoric behind hunting as a conservation tool is examined, it is falling apart. It may be because the common assertions about hunting's conservation value made by hunting groups are being questioned, as Professor Wiersema suggested, or because the science and economics behind those assertions are proving to be unfounded, as Mr. Harris suggested, or simply because state wildlife board membership are becoming increasingly more diverse, as Professor Lovvorn suggested. The idea of hunting as a conservation tool is in the crosshairs – only time will tell if it lives for another season or perishes.

Understandably, with time constraints the panelists did not have time to address all aspects of hunting as a conservation tool. I would be interested in hearing the panelists' views on hunting as a conservation tool in the United States, particularly with respect to animals like deer and elk.

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8. *Faculty Page of Jonathan Lovvorn*, HARV. L. SCH., http://hls.harvard.edu/faculty/directory/11499/Lovvorn (last visited Feb. 16, 2018).

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