



SPECIAL SUPPLEMENT

"Hunting provides the principal incentive and revenue for conservation.  
Hence it is a force for conservation."

# World Conservation Force Bulletin

www.conservationforce.org September 2012

## Success! USFWS Proposes the Downlisting & Importation of Torghar Markhor Without an ESA Import Permit

**O**n August 7, 2012, the US Fish & Wildlife Service (USFWS) published in the Federal Register a 12-month finding on our petition and proposed a rule to reclassify the straight-horned markhor (*Capra falconeri jerdoni*) from endangered to threatened under the Endangered Species Act (ESA). The USFWS also published a proposed rule allowing the import of sport-hunted straight-horned markhor trophies taken from established conservation programs that meet certain criteria.

A copy of the 16-page rule can be found on USFWS' website at [www.fws.gov/policy/library/2012/2012-19071.pdf](http://www.fws.gov/policy/library/2012/2012-19071.pdf) or [www.regulations.gov](http://www.regulations.gov). It can also be found on Conservation Force's website at [www.conservationforce.org/news.html](http://www.conservationforce.org/news.html) or in the Federal Register at 152 FR 47011-47027, August 7, 2012.

The proposed rule is in response to the petition received from Conservation Force, on behalf of Dallas Safari Club, Houston Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/Ovis, Wild Sheep Foundation, Jerry Brenner, Steve Hornady, Alan Sackman and Barbara Lee Sackman, requesting the Service downlist the Torghar Hills population of the Suleiman markhor in the Balochistan Province of Pakistan, from endangered to threatened under the Act. That was the second petition to downlist that population of markhor. The first was filed by Naseer Tareen and STEP in 1999 at the suggestion of yours truly and the International Affairs Division of USFWS. Although the USFWS made a positive 90-day finding on that 1999 petition, it never completed the 12-month finding noticed



### DATELINE: Pakistan



John J. Jackson III

in the Federal Register. When sued by Conservation Force and allied organizations, including Tareen and STEP, the USFWS raised the defense that more than six years had passed, therefore it was legally unenforceable. We appealed that dismissal, which appeal has been fully briefed and is awaiting oral argument. Interestingly, Sierra Club filed an amicus brief in that case for its own purposes supporting our

argument that the downlisting petitioners were led to believe that suit was not necessary until Conservation Force faced reality and decided enough is enough.

The August 7 12-month determination is not just a positive finding. It is now a proposal by the USFWS to downlist the population, which takes it beyond the point the 1999 petition ever reached. Of course, the second petition also had more than a decade of additional data demonstrating the recovery and continuing population increases and excellent management practices. We anticipate that USFWS will file a motion to dismiss the appeal of the first mark-

hor case, Markhor I, on the grounds this 12-month determination moots that claim to compel a 12-month finding on

the first petition.

The notice has five parts in one: 1.) It is a positive 12-month finding. 2.) It serves as the five-year review, which is supposed to be made every five years and has not been completed since 1976 when it was listed. 3.) It proposes the reclassification of all straight-horned markhor from endangered to threatened (not just those in the Torghar Hills). 4.) It proposes a new Special Rule (17.40(r)) that will allow the "threatened" listed species to be imported without an ESA permit and associated proof of enhancement. 5.) The Special Rule specifies how other areas can get import approval for their straight-horned markhor. Each is a success.

**"The proposed Special Rule is purposefully designed to encourage conservation of additional populations of the straight-horned markhor" ... as originally intended in the 1980s and urged by Conservation Force."**

The proposal is ambiguous about the continued need for a CITES Appendix I import permit. Of course, all trade in Appendix I species requires a CITES import permit based upon a non-detriment determination made by the Division of Scientific Authority (DSA). This requirement should not be a problem because there is a CITES quota created by the Parties for all markhor from Pakistan, and the DSA has been issuing advices for over a decade that the purpose of the import of straight-horned markhor from the Torghar Hills Conservation Project (TCP) is not detrimental. DSA made a positive determination as early as 2000 in Clint Heiber's

import permit application and most recently for the permit applications of all the Plaintiffs in the Markhor I, II

and III suits. The hang-up has been the Division of Management Authority's (DMA) delay and denial in making enhancement findings under the ESA. That enhancement determination by the DMA will no longer be necessary for the reclassified straight-horned markhor in the Torghar Hills and other populations of straight-horned markhor as they get approved subpopulation-by-subpopulation by USFWS.

### Strategy for Other Populations of Straight-Horned Markhor

The proposed Special Rule is purposefully designed to "encourage conservation of additional populations of the straight-horned markhor" beyond the Torghar Hills of Pakistan as originally intended in the 1980s and urged by Conservation Force.

*In recognizing the potential of conservation programs, including those based on sport hunting, we are proposing a special rule to allow the import of sport-hunted markhor trophies taken from established conservation programs without a threatened species permit issued under 50 CFR 17.32, provided that certain criteria are met. Importation of a personal sport-hunted straight-horned markhor may be authorized by the Director of the US Fish and Wildlife Service without a threatened species permit if the trophy is taken from a conservation program that meets the following criteria: (1) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport-hunting, and the populations are stable or increasing; (2) regulating authorities have the capacity to obtain sound data on populations; (3) the conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species; (4) regulating authorities have the legal and practical capacity to provide for the long-term survival of the populations; (5) regulating authorities can determine that the trophies have in fact been legally*

*taken from the populations under an established conservation program. The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the Federal Register the importation of personal sport-hunted straight-horned markhor, taken legally from the established conservation program after the date of such notice, without a threatened species permit, provided that the applicable provisions of 50 CFR part 23 have been met.*

It would be a great boost to the hunting world if other areas develop straight-horned markhor conservation plans and implement them. According to USFWS, "[t]here are no other populations of straight-horned markhor under management plans." It may take years, but the more approved, the more markhor there will be available for hunting each year.

The USFWS did not find that the Torghar Hills was a "Distinct Population Segment" as it did when making the 90-day determination in 1999 and again in the 90-day determination in the second petition in 2011. Instead, USFWS found that the Torghar Hills was a "Significant Range" of the straight-horned markhor and the rest of the populations are not distinct population segments under the ESA. That means the TCP population is so recovered that the species could survive with that population alone, without the other populations. That qualifies it as a significant range, which none of the other populations are. The other populations are dispensable.

Comments can be filed by October 9, 2012. Electronically: Go to the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). In the Keyword box, enter Docket No. FWS-R9-ES-2011-0003 and then follow the instructions for submitting comments. US mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-ES-2011-0003, Division of Policy and Directives Management; US Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

### USFWS Deserving of Credit

It may surprise readers to know that the USFWS initially played a large role in the recovery of this significant range population. The USFWS states in the rule



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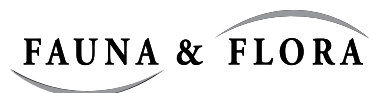
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that in 1985 the local tribal leaders turned to the USFWS for help and “[t]ogether, they developed the TCP, an innovative community-based conservation program that allows for limited trophy hunting to conserve local populations of markhor, improve habitat for both markhor and domestic livestock, and improve the economic conditions for local tribes in Torghar.”

Dick Mitchell, Ph.D., Dave Ferguson and Bart O’Gara, Ph.D. suggested the hunting-based strategy to recover the species in 1985. Its population has increased from 200 to over 3,000 today (really 3,500 unpublished – Frisina) as a result of a complete elimination of poaching. It is one of far too few species that have recovered after being ESA listed. Moreover, it has recovered because of a conservation action plan based upon sustainable use rather than protection. The poaching has been wholly eliminated by the more than 80 game guards funded by the tourist-hunters, and the local tribal people have been incentivized by the revenue and employment. The initial game management plan has now been augmented by land and agriculture plans. The Convention on Biodiversity cites the project as a best case example of sustainable use, not of protection. Not just any sustainable use. To quote the USFWS, the recovery is due to “a trophy hunting conservation plan.”

Now, finally, it can reach its revenue potential and be a model for others in developing nations to emulate. It is a model for other species as well as other straight-horned markhor populations. The trade barriers have handicapped its development. First, the Appendix I listing on CITES was a hindrance, but the establishment of a CITES quota set by the Parties to facilitate the trade changed that. In fact, the DSA of USFWS has been making favorable CITES non-detriment findings for over a decade. Now, if and when reclassified on the ESA, the revenue will no doubt increase to better secure the management. If it is like the Kashmir, flare-horned markhor that Conservation Force established the import of a few years ago, the price may triple.

In its press release, the USFWS said:

*The proposed reclassification and special rule recognizes the substantial contribution made by recovery actions now occurring in the Torghar Hills, a chain of rugged sandstone ridges located within the Toba Kakar Range in Pakistan. Here, locals have implemented a wildlife management plan called the Torghar Conservation Project (TCP), an innovative, community-based conservation program that allows for limited trophy hunting to conserve local populations of markhor, improve habitat for both markhor and domestic livestock, and improve the economic conditions for local tribes in Torghar.*

*The project, which has been in effect since 1985, has increased the Torghar Hills population from fewer than 200 animals in the mid-1980s to more than 3,000 animals today. This growth can be attributed to the substantial reduction in mortality that occurred when uncontrolled hunting by tribes was stopped, as well as the virtual elimination of poaching driven by the hiring of more than 80 game guards from the local population.*

In its analysis, the USFWS did not “take into account” Pakistan’s or Torghar Hills’ conservation practices as a standalone issue or factor to be considered in making the listing reclassification decision. At no time did it consider the negative effect the continued listing was having upon the recovery of the markhor and it failed to consider many of the benefits of the conservation plan that would be greater if there was greater US hunter participation.

USFWS recognized that poaching had been eliminated, the markhor population had increased for nearly 30 years, there was a management plan and that the primary source of operating revenue was from the hunting. They stopped there without any analysis that operating and incentivizing revenues were likely to increase, as well as collateral benefits, with heightened participation by more US sportsmen’s conservation organizations and individuals with the American conservation ethic. Consequentially, there was no mention of the extra sums US hunters have paid above and beyond

the cost of their hunts. There was no recognition of the contributions of Shikar Safari Club towards the scientific education of community leaders. There was no mention of the protected area that the International Foundation for the Conservation of Wildlife (IGF) of Paris

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**The Convention on Biodiversity cites the project as a best case example of sustainable use, not of protection. ...the recovery is due to “a trophy hunting conservation plan.”**

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had established.

They still don’t get it. It has not been the protection measures of the ESA that have recovered the markhor. It has been local protection by tribesmen paid with revenue from the trophy hunting. The US prohibition against import of trophies has been a barrier to recovery, significantly lengthened the recovery period and prevented it from reaching its full potential. The negative impact of the listing was not a factor considered in this proposal and consequently, neither was the need to de-list without delay. The USFWS did mention greater benefits in its proposed enhancement policy in 2002 that was not formally adopted. The USFWS published the negative effects of the ESA listing of these markhor, but did not go there in this downlisting proposal. Had these markhor not been listed, they would have recovered sooner and been further along today. Ditto other areas. Had it been downlisted a decade ago or import permits granted, it would be a great deal better off today. The protection afforded by the ESA is not what stopped local poaching. Instead, the common sense of some past USFWS advisors and the call for help by local leaders sparked the recovery. The markhor have prospered despite the

ESA listing. International trade has been of benefit, not the threat.

### The Role of Hunting: "Trophy Hunting"

In the USFWS' own words:

*The Service recognizes that there is a reasonable argument for the proposition that controlled sports hunting (i.e., noncommercial) may provide economic incentives that contribute to the conservation of certain wildlife populations. These incentives may be direct, such as generating funding for essential conservation measures through licensing fees. They may also be indirect, such as focusing governmental attention on the need to protect species of economic value.*

*Well-managed conservation programs, including those that incorporate sport hunting, can significantly contribute to the conservation of wildlife, improve wildlife populations, and greatly enhance the livelihoods of the local people. The primary objective of a well-managed trophy hunting program is not hunting, but the conservation of large mammals (Shackleton 2001, p.7). The key lies in ensuring a sufficient number of mature males remain in the population to maintain normal reproduction rates. For species with polygynous mating systems, removing some of the males from a population does not necessarily affect the growth rate of the population. If a fraction of the mature males (approximately 2 percent) are removed, normal reproduction can be maintained and any long-term genetic impacts from removing "genetically superior" individuals from a population can be minimized (Shackleton 2001, p.10).*

*Many hunters are willing to pay relatively large fees for the privilege to hunt. If the money is used to conserve*

*the species that is the focus of the conservation program, the program may be sustainable. Additionally, habitat restoration may also be achieved. Incorporating the needs of the local people creates an incentive to conserve wildlife and ensures the success of the program (Shackleton 2001, pp.7, 10).*

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**The USFWS noted that "markhor populations significantly increased only in conservation areas managed for trophy hunting...." They have declined everywhere else they are listed, it said.**

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Why so many "may's?" It is not a "may" or "can" in this instance. Sport hunting did recover the species in this instance. The USFWS also said:

*In the Torghar Hills, locals have implemented a wildlife management plan, the Torghar Conservation Project (TCP), and created financial incentives for community-based conservation to combat years of drought, habitat loss and substantial losses in their livestock herds. Specifically, the Torghar Hills tribal council recognized that protecting markhor and its habitat can generate*

*greater income for the community, rather than relying solely on traditional livestock production.*

The USFWS noted that "markhor populations significantly increased only in conservation areas managed for trophy hunting...." They have declined everywhere else they are listed, it said.

The USFWS admits that CITES created a quota for markhor "trophy hunting programs...[t]o encourage communities to conserve populations of markhor" and that "[p]opulations of ungulates in Pakistan have significantly increased under trophy hunting programs...." "The success of this program has contributed greatly to the conservation of the subspecies by recovering the straight-horned markhor from the brink of extinction."

Although we are still litigating portions of Markhor I (first petition 1999 and bad permitting practices) and Markhor II (permit denials), this 12-month finding and proposed rule fulfills the USFWS' obligations under its settlement agreement with Conservation Force and the other plaintiffs in Markhor III (violations of mandated deadlines) to complete the 12-month finding by July 31.

It has been our privilege and honor to represent the Torghar Conservation Project and to partner with the other plaintiffs and petitioners. The end is within sight.

To quote one of Conservation Force's supporting members (Craig Boddington) who has taken a straight-horned markhor: "This would be an incredible victory for the good guys...even though it only makes sense. Awesome!!!!!" ■

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