



“SERVING THE HUNTER WHO TRAVELS”

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

Special To The Hunting Report World Conservation Force Bulletin

by John J. Jackson, III

Argali Suit Finally Finished: Positive Gains

The Antis who filed the Argali case have voluntarily dismissed their appeal. The case is over. It was more than a win. We are better off because of the suit. Ironically, hunting interests have been advanced by the suit, not the interests of anti-hunters and animal rights organizations.

The plaintiffs dismissed their appeal by a motion filed on July 7, 2004. There was no reason given for the dismissal one full month before their appeals brief was due. Everything the Antis did up to that point suggested that they intended to vigorously pursue the appeal.

The suit lasted more than three years (it was filed April 2001) and dominated my personal life as was expected. The boxes of files almost fill a storage room. All of my legal services were provided *pro bono* to the hunting community, Mongolia and the Kyrgyz Republic (for strategic purposes, we only filed a formal intervention on behalf of Mongolia, not Kyrgyzstan). Conservation Force,

through its many contributors, bore the many thousands of dollars of out-of-pocket court costs and expenses from transcripts to legal clerks. Conservation Force represented the greatest number of interveners, filed and won the greatest number of motions, filed



the greatest number of supporting declarations and affidavits, and selected and initiated the unique arguments and strategy that won the case.

The end results are positive and have advanced hunter's interests. The following are some of the gains:

First, the suit caused the US Fish &

Wildlife Service (USF&WS) to “withdraw” its decade-old proposal to uplist the Argali in Mongolia, Kyrgyzstan and Tajikistan as “endangered” (58 FR 25595, April 27, 1993). An “endangered” listing would have stopped US trophy imports. Through the suit, we learned that the USF&WS proposal that would have listed all Argali as “endangered” had not been abandoned. It was like a cloud hanging over the hunting community. Now, the Service has finally ruled that the Argali in Mongolia, Kyrgyzstan and Tajikistan are not “endangered” (67 FR 35942, May 22, 2002). The Service's “withdrawal” of that foreboding proposal has also withstood the suit of the Antis. After that proposal was withdrawn, they amended the Argali suit to include a claim that the “withdrawal” was improper.

Second, in the Argali suit, the interests and rights of foreign governments under the Endanger Species Act (ESA) was established and judicially recognized for the first time. In a precedent-setting opinion, a three-judge

federal appeals panel held that foreign governments (Mongolia) have an absolute right to participate in every part of the ESA process as the owners and managers of their resources (Argali), including participation in third-party lawsuits. Anti-hunting organizations are not free to impose their “new morality” or will on indigenous peoples and other nations in the Developing World without the participation of those it impacts the most.

Third, the Judge’s opinion resolves some important ESA legal issues about trophy importations. The prohibition against the “take” of a domestic listed species that stopped wolf hunting in Minnesota and grizzly hunting in Montana does not apply to issuance of permits for importation of “threatened” game taken in foreign countries. That is important. For more than a de-

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cade the Antis have been threatening the USF&WS with suit for issuing trophy import permits of “threatened” species. Their position has been that trophy import permits can only be granted “in the extraordinary case where population pressures (of the species being imported) within a given ecosystem cannot be otherwise relieved....” That is because the Courts have applied that test to the taking of “threatened” listed wolf and grizzly when taken within the United States. Thanks to the Argali case, the ESA prohibition against hunting has now been determined not to be applicable to importation of trophies “taken” (hunted) in foreign lands. The Antis first raised the legal issue that trophies of “threatened” species should not be importable in the Elephant Law Suit but their intervention occurred too late

for that issue to be addressed in that case.

Fourth, the suit also sheds a great deal of light on the “special” regulations governing importation of Argali trophies. Those regulations had confounded everyone. We now know exactly what must be done before the USF&WS will allow trophy importations from the three countries (Mongolia, Tajikistan and Kyrgyzia) without a permit. If and when the six criteria in the “special” regulations are satisfied, the Service will no longer require import permits for that country. In fact, the Argali is the only “threatened” listed species on Appendix II of CITES for which an import permit is required. It is an unusual requirement never before applied to foreign species listed as “threatened” under the ESA when they are already protected by an Appendix II CITES listing. Until information is received that satisfy the six criteria to the Service’s satisfaction, trophy import permits will continue to be required. Not surprisingly, the conditions (information needed) for trophy imports without import permits closely tracks the criteria for listing species set forth in the ESA. Nevertheless, the six conditions of the special regulations hopefully will be applied less rigidly and more expeditiously than the formal downlisting process. Dowlisting petitions for cheetah, wood bison in Canada, markhor in Pakistan and even elephant in southern Africa have all been denied or left pending indefinitely over the past decade. Satisfying the “special” regulation for argali may be more reasonably received.

As explained above, the Service has not been issuing permits under the “Special” Argali regulation. That regulation dispenses with the need for a permit when the Service’s conditions are satisfied and is only intended to apply after that circumstance. Instead, the Service issues trophy import permits under its general authority. Each year, it determines that the hunting does not jeopardize the Argali (non-jeopardy finding) and that it enhances the Argali’s survival (enhancement finding). These findings are made by two different divisions of the USF&WS

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before permits are issued each year. This means that the Service has been making a finding that Argali hunting is benefiting the Argali each year since they were listed. Stated differently, hunters have in fact been found to be a force for the conservation of Argali each year.

Fifth, the Argali decision is also the first formal judicial recognition under the ESA that hunting benefits a “threatened” listed species. Although USF&W has been making that internal decision each year in each of the three countries exporting Argali trophies, no court had reviewed it. In fact, this was the first suit attempting directly to stop the importation of hunting trophies. The Antis suit rested on the assumption that hunting of a listed foreign species is inherently detrimental to its survival. The Trial Court’s opinion makes it clear that US tourist hunting of Argali is preferable because the sheep are to be taken or even eliminated anyway. The regulated hunting by US hunters that is the primary incentive and revenue for the sheep conservation is a better, more beneficial use. Organizations like The Earth In-

land Institute (one of the Argali plaintiffs) have long argued that “USF&WS funds, and taxpayer support, should not be used for the research that would contribute to the foundation of, or enable, ‘hunting conservation’ schemes in any argali-range nation.... In addition, sanctioned hunting is the most



easily eliminated factor contributing to species decline.” The Argali suit result is also a far cry from the press release assertion of the Fund for Animals that, “[i]t is unconscionable that hundreds of animals in this imperiled species have been killed (*Editor Note:* Closer to a total of one thousand today) simply so wealthy American tro-

phy hunters can add more heads to their collections.” The Antis were cocksure that “head” hunting, as they mischaracterized it, would be enjoined. Wrong.

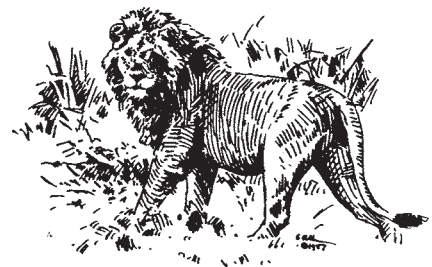
Sixth, the suit also caused an unexpected response from the hunting community that promises to be a formidable force in the future. With Conservation Force in the lead, Safari Club International and the US Sportsmen’s Alliance’s legal teams all filed full interventions. The Antis found themselves facing the legal expertise and capacity of those three legal teams and that of the government agencies’ attorneys as well. Despite the Antis’ successes in other cases, it must have been bewildering for the them to suddenly be confronted with so much opposition. They can expect no less opposition in the future. The sheep hunting community also pulled together when both the Foundation for North American Wild Sheep and Grand Slam/OVIS stepped into the ring with Conservation Force. That can be expected in the future as well. The “Ducks Unlimited” of the sheep conservation world will no longer sit by while the Antis dictate bad policy to the world.

Case Study of a Man-Eating Lion Killing 35 People

Dr. Rolf D. Galdus who directs the GTZ Wildlife Program in Tanzania just completed a case study of lions killing 35 people in eight villages in the Rufiji District within 20 months. No, this is not a *Ghost in the Darkness*. It surpasses the Tsalvo man-eaters which killed 28 people in 1898-99 and which were portrayed in that movie. In this case, 35 children, men and women were taken, many out of their huts, killed and eaten by lions between August 2002 and April 2004 within a very short distance of the capital, Dar es Salaam.

Tanzania has the largest population of lions in Africa and has a long, documented history of man-eaters. Dr. Rolf Baldus cites the report of records of game ranger George Rushby in 1965 that 1,500 people were killed by lions between 1932 and 1946 in one area not more than 2,000 km. in size. More recently, 42 people were killed in 1986

in the Tunduru District. Even the district game officer was killed. Between July 1994 and September of the following year, 29 people were killed and 17 injured in Liwale District. Between



16 January 1997 and November of that same year, 17 people were killed in Mkuranga District, which is not more than 50 kilometers from the city center of Dar es Salaam. In the Lindu Dis-

trict, at least 24 people were killed and a similar number injured in just one cluster of hamlets near the airport near the coast in 1999/2000.

The most serious one-lion case is that of the 35 people killed and 10 injured in the Mkongo ward between August 2002 and April 2004, cited above. Dr. Balkus made a study of those killings. The most frequent method of attack was the lion forcing its way through the wall of a hut, or jumping on top of and through the hut roof. Frequently, the lion killed both persons in the hut but normally left the second person behind. The second most common style of attack is jumping up on people who are watching planted fields atop platforms called “Madungus”. In effect, the people are presenting themselves as live bait, Balkus notes.

Balkus, it should be noted, opposes the Kenya proposal that lions be

placed on Appendix 1 of CITES. He quotes Craig Packer that has researched lion in the Serengeti for 26 years as stating that the “Kenya listing (proposal) is irresponsible.” There is no documented decline in lion numbers over the recent past. The lion population in Tanzania alone may be greater than the lion population estimates for all of Africa cited by Kenya.

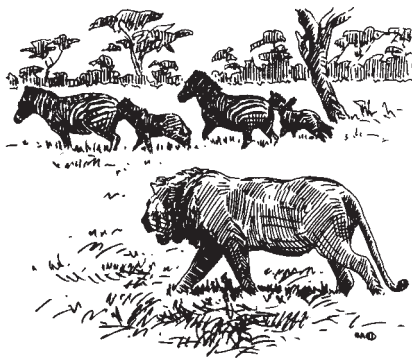
Dr. Balkus states that the “Chardonnet” lion population estimate (2002) completed under the auspices of Conservation Force and International Foundation For The Conservation of Wildlife is the most “systemic and comprehensive study” done on the status of African lions. That study shows a lion population estimate for Tanzania of 14,432 lions (10,409 minimum and 18,215 maximum). Balkus feels that even the “Chardonnet” Study is conservative because most figures for the protected areas in Tanzania are underestimates. On that point, he is correct. We too consider the estimates conservative as stated in our study. Though the study is more inclusive than others, it is only meant to be a contribution to the study of the status of African lions, not an end in itself.

Balkus states that “lions breed ‘like rabbits’ (over 20 percent per year).” For a proven example, he cites the Serengeti that “lost one third of its population due to an apparent mutation of the Canine Disemper Virus around 1994-95 (from 3,000 to under 2,000) and is back now to an all-time high of around 3,800 in the ecosystem.” Conservation Force reported this in earlier issues of this bulletin.

He states that “[t]he reasons which have led to such a tremendous loss of lions in Kenya or in West Africa (an assumption that Conservation Force believes may not be true in West Africa) are not connected to international trade. To upgrade the lion to CITES Appendix 1 as proposed by Kenya would not address any of the issues that adversely affect the lion populations, i.e. loss of habitat to agriculture, problem animal control, poaching and killing of lions by pastoralists. It would, however, make the hunting of lions more difficult or even impossible. This

hunting is sustainable, and its giving value to lions is one major element in the range of conservation tools which Tanzania has successfully applied to protect the future of the lion.” Ironically, Kenya has been reported killing as many as 200 lions at a time in problem animal control.

Even Botswana that closed its lion hunting several years ago has filed a formal opposition to Kenya’s proposal. Though its lion hunting is temporarily



closed, Botswana states that safari hunting of lion is an important tool if the lion is to survive beyond the borders of parks and protected area.

Balkus’ report also analyzes safari lion hunting in Tanzania, which has the largest lion population in Africa. Lion trophy fees in Tanzania make up

9.4 percent of all of the trophy fees paid into the country. The significance of this becomes clear when you compare the low number of lions that are taken with the great number of other game animals that are taken, i.e., lions provide a higher return per animal. The gross amount of income generated from lion hunting in Tanzania per annum is \$6 to \$7 million dollars (US).

A careful analysis of the lion trophy data from 1995 to 2003 “has revealed no significant trend in trophy quality in the Selous Game Reserve. This is further evidence that the off-take has been sustainable.... The data do suggest that lion trophy quality responds rapidly to hunting intensity and lion populations are able to recover easily.”

Balkus concludes by stating that, “[t]he publication of grossly false (or falsified) figures for lion numbers does not facilitate the debate on how to best conserve lions in their range.... It is also not helpful if a country like Kenya, which for a variety of reasons unfortunately has a rather deplorable record of lion and wildlife conservation since its hunting ban 27 years ago, proposes an upgrading of lion to Appendix 1. This proposal aims at banning international trade and this is directed essentially at hunting trophies due to near non-existence of other trade. In no way does this address the reasons which have led to the widespread disappearance of lions in Kenya. It will, however, negatively affect the sustainable and consumptive use of lions in countries where this contributes to successful lion conservation.” – *John J. Jackson, III.*

(*Postscript:* Dr. Rolf D. Galdus’s full report and its interesting annexes can be found at http://www.conservationforce.org/alerts/get_news.cfm?art_id=60. Both Dr. Rolf Galdus and Craig Packer are working closely with Conservation Force to keep the lion off of Appendix 1. We can win this case but we need your help. Mail your contributions to Conservation Force at: One Lakeway Center, Suite 1045, Metairie, LA 70002; or go to our web site, www.conservationforce.org, and make a secure donation by credit card.)

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