August 17, 2010

Secretary Ken Salazar

Department of the Interior

1849 C Street, N.W.

Washington, DC 20240

Director Rowan Gould

U.S. Fish and Wildlife Service

1849 C Street, N.W.

Washington, DC 20240

*Petition to Downlist Straight-Horned Markhor of Torghar Hills*

*from “Endangered” to “Threatened”*

Dear Secretary Salazar and Director Gould:

Invoking the right to do so under 5 U.S.C. §553(e), Petitioners Conservation Force, Shikar Safari Club International, 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 (hereinafter, “Petitioners”) hereby submit to the Secretary of the Interior and the U.S. Fish and Wildlife Service (“the Service”) this petition to downlist the Torghar Hills population of *Capra falconeri jerdoni* or *C.f. megaceros,[[1]](#footnote-1)*commonly known as Suleiman markhor or straight-horned markhor, a subspecies of markhor located in Balochistan Province, Pakistan. This population of straight-horned markhor qualifies as a “distinct population segment.” 64 F.R. 51500 (Sept. 23, 1999) (“[T]he discreteness and significance of the Torghar Hills population of straight-horned markhor indicate that it qualifies as a distinct vertebrate population segment under our February 7, 1996 policy (61 FR 4722).”). Petitioners also submit and incorporate by reference and attachment each of the documents listed on the “Index of Attachments” included at the end of this document.

As discussed more fully below, the Suleiman markhor has recovered from its 1985 low-point of less than 100 animals, to a thriving population that is now over 3,100 strong. The increase has been consistent for decades; therefore Petitioners request and recommend that the Secretary and the Service downlist this population of straight-horned markhor from “endangered” to “threatened,” in accordance with the Endangered Species Act (16 U.S.C. §§ 1531 *et seq*.) and the regulations of the U.S. Fish and Wildlife Service (50 C.F.R. §424).

For simplicity, Petitioners hereinafter use “straight-horned markhor” and/or “markhor” to refer specifically to the Torghar Hills population. To quote from A Review of Community-Based Trophy Hunting Programs in Pakistan, Shackleton, “The **primary objective** of the trophy hunting program is the conservation of large mammals such as Caprinae, along with their habitats…Pakistan is positioned to lead the world in the application of community-based trophy hunting programs…The programs it has initiated are progressing but require **support and nurturing** if they are to provide sustainable conservation benefits for wildlife and communities.” (Emphasis added.) The current listing does not “support” or “nurture” the program, or recognize its *purpose* (“primary objective”).

The sustainable use tourist hunting program in Pakistan is one of the most sophisticated and renowned in the world. It owes its existence to the world’s leading wildlife conservation organizations that have used tourist trophy hunting as the ultimate tool for the conservation of markhor. It has been engineered by WWF-Pakistan (“the largest non-government conservation organization in the country”), the IUCN’s Sustainable Use Specialist Group who are specialists in sustainable use, IUCN-Pakistan (“IUCN-Pakistan is the largest of any country program of IUCN”) and the United Nations Development Program/GEF every step of the way. Those conservation NGOs and international entities have helped design and adopt both national and regional legislation applying the very best, state-of-the-art concepts. The Convention on Biodiversity cites the markhor program in Pakistan as the single best example of “best practices” of sustainable use. CITES regales it and has increased the quotas from 6 to 12 in recognition of all that it stands for.

**Previous Downlisting Petition**

This is the second independent petition to downlist the straight-horned markhor. In 1999, Sardar Naseer Tareen, Head of the Society for Torghar Environmental Protection (STEP, discussed below) and the IUCN Central Asia Sustainable Use Specialist Group, submitted a petition to the Service requesting the same action requested here: that the straight-horned markhor of Torghar be reclassified from “endangered” to “threatened.” *See* Tareen Petition (Feb. 27, 1999), attached. Thereafter, the Service published a “90-day” finding that “the petition present[ed] substantial information indicating that the requested action may be warranted.” 64 F.R. 51500 (Sept. 23, 1999), attached.

Nevertheless, the Service has taken no further action regarding the listing of the straight-horned markhor in the **ten years** following the “90 day finding” and claims in court that so much time has lapsed that the downlisting timelines are no longer enforceable. During this time, the Torghar Conservation Program (TCP) and, consequently, the markhor population of the Torghar Hills, have continued to prosper. Petitioners therefore submit this petition, referencing and attaching Naseer Tareen’s 1999 petition and all of the information included therein, and supplying additional data, details, and documents confirming that the straight-horned markhor should be downlisted from “endangered” to “threatened.” This letter is not, however, an amendment to, a comment to, nor a revision of the 1999 petition. This is a second, separate petition to downlist the Suleiman markhor of the Torghar Region. Conservation Force maintains a relationship with STEP and fully supported the 1999 downlisting petition. However, today’s Petitioners are wholly distinct parties in interest and do not overlap in any way with the Petitioners of 1999. Today’s Petitioners fear that, based on the Service’s history of inaction on such matters, entangling this petition with the downlisting petition of 1999 may result in additional delay. Therefore, out of an abundance of caution, Petitioners reiterate that neither Naseer Tareen nor STEP are petitioners in this petition. We repeat: this is not a comment in support of the original petition. It is a wholly independent petition.

**Torghar Conservation Project / Society for Torghar Environmental Protection**

The recovery of the Torghar Hills population of straight-horned markhor is due solely to the efforts of the Torghar Conservation Project (TCP). The TCP was initiated in 1985 by Sardar Naseer Tareen and the late Nawab Taimur Shah Jogezai, a local tribal chieftain, with assistance from the United States Fish and Wildlife Service. *See* Tareen Petition (Feb. 27, 1999). *See also* Michael R. Frisina & Sardar Naseer A Tareen, *Exploitation Prevents Extinction: Case Study of Endangered Himalayan Sheep and Goats*, in *Recreational Hunting, Conservation, and Rural Livelihoods*, 146 (Barney Dickson, Jon Hutton, & William M. Adams ed., 2009); 2010 CIC Markhor Award Appl. at 2. “They agreed that a game guard programme with limited trophy hunting was essential to save Torghar’s urial and markhor populations from extinction. Trophy hunting could provide funding to maintain the conservation programme.” Frisina & Tareen at 146 (2009). Over time, the TCP evolved into the Society for Torghar Environmental Protection (STEP), an officially registered nongovernmental organization under Pakistani law. *Id*. at 147.

The materials attached to this petition provide an in-depth discussion and analysis of the TCP/STEP. In short, it is an extremely successful program by which local tribespeople participate in the conservation and re-establishment of markhor: a small number of markhor[[2]](#footnote-2) hunting permits are sold to international hunters; the profits from these sales fund the TCP’s conservation efforts, including paying the salaries of local tribesmen trained to be game guards; and, in return, the locals agree to refrain from hunting the animals. The Torghar area is a very poor, agro-pastoral society, with very few permanent, salaried jobs. *Lessons Learned: Case Studies in Sustainable Use: Conservation of Sulaiman Markhor and Afghan Urial by Local Tribesman in Torghar, Pakistan*, 10, Convention on Biological Diversity. “Thus, there is tremendous need for both additional sources of income and permanent jobs for valley residents. Both these needs provide strong incentives for people to participate and support the project.” *Id*. The local people see the “direct link between employment and social well-being” and understand that a healthy population of markhor is a prerequisite to the hunting that provides for that much-needed employment. *Id*. at 9. At present, the TCP/STEP employs approximately 82 game guards. 2010 CIC Markhor Award Appl. at 6.

In 1985, fewer than 100 markhor were thought to be living in the Torghar Hills region. Luc Bellon, *A Treasure in My Backyard: Suleiman Markhor,* 61 (2008) (Annexe 5: “Census Main Findings”). Since the inception of the TCP, however, the numbers have rapidly and steadily increased. In 1994, a study conducted by professional biologist Kurt Johnson revealed that the number of markhor had climbed to almost 700. *See* M. Arshad and M. Samar Jussain Khan, *Fall Survey of Suleiman Markhor (*Capra falconeri jerdoni*) and Afghan Urial (*Ovis orientalis cycloceros*) in the Torghar Conservation Project, Killa Saifullah, Balochistan,* 10 (April 27, 2009). This number doubled quickly, as surveys in 1997 and 1999 showed populations of 1,298 and 1,694, respectively. *Id*. By 2004, the Zoological Survey of Pakistan revealed that the population had grown to approximately 2,500. Bellon at 61. This number is confirmed by more than one source. *See* Frisina & Tareen at 148 (population over time) and 153 (approximately 2,541 Suleiman markhor in November 2005) (2009). Today, the markhor population continues to flourish: at the time of the most recent survey (November 2008), **the number of markhor in the area had burgeoned to** **over 3,100**. Arshad and Kahn at 8 (2009). The program has been and continues to be quite successful.

The logic of the program’s success is rather simple: “The animals sought by hunters are exclusively older males with the largest horns. Hunting those animals means leaving the female and younger males at peace, therefore not interfering in the reproduction cycles. The growth rate is thus undisturbed.” Bellon at 18-19. The TCP responsibly regulates the number of markhor that may be taken annually by establishing a “sustainable trophy harvest number,” then actually allowing a much lower number of permits to be sold. *Id*. at 22.

The TCP/STEP is a unique program that has been recognized around the world for its ongoing success in re-establishing a viable population of markhor. For example, the program was recognized at the Third World Conference on Mountain Ungulates in Saragossa, Aragon, Spain, which was organized by, among others, the *Caprinae* Specialist Group of IUCN. *See* presentation by Frisina, Woodford, and Awan. “Because of the publicity that STEP has generated, tribal groups from at least seven other mountain ranges in Balochistan have expressed an interest in establishing similar programmes.” *Lessons Learned* at 11.

Furthermore, the markhor’s success story is so inspiring that the International Council for Game and Wildlife Conservation (“CIC”) has borrowed its name for an award “which honours outstanding conservation performance that links biodiversity conservation and human livelihoods through sustainable use of natural resources”: the CIC Markhor Award. *See* *Sustainable Hunting Tourism Can Reverse Biodiversity Loss: Grassroots Project in Pakistan Honoured by the CIC,* International Council for Game and Wildlife Conservation. This year, the TCP is being honored with that very award at the Convention on Biological Diversity’s 10th Conference of the Parties. *Id*. Not only does the program benefit the markhor population, but the funds that it generates “have been used to improve water supply and health care in local communities, to provide education and vocational training, and to improve agricultural systems, including the establishment of fruit and firewood sapling trees for orchards.” *Biodiversity, Development, and Poverty Alleviation: Recognizing the Role of Biodiversity for Human Well-Being.* Convention on Biological Diversity (2010).

It is hard to say enough about the TCP and its positive impact on the markhor, the environment, and the local community. All in all, the TCP is recognized throughout the world as a very successful program, enabling the markhor to survive and thrive in their native environment, while assisting the local people to do the same.

**Factors**

The Endangered Species Act identifies five factors that the Secretary must consider when determining whether a species should be considered “threatened” or “endangered”:

(A) the present or threatened destruction, modification, or curtailment of [the species’] habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

16 U.S.C. §1533(a)(1). Moreover, 1533(b)(A)(a)(1), the *Basis of Determination* section expressly provides that the “efforts…being made by…the foreign nation” shall be taken “into account.” Petitioners hereby address each factor in turn:

**A. Present or threatened destruction, modification, or curtailment of habitat or range:**

As mentioned above, the markhor at issue live in the Torghar Hills of Balochistan, Pakistan. This grouping of straight-horned markhor is a “distinct population segment” and represents the “highest concentration of straight-horned markhor in the world.” Bellon at 1; *see also* 64 F.R. 51500. The mountain area is formed of rugged sandstone, and is bounded on the north and south by two valleys: the Kundar River Valley and the Khaisor Valley, respectively. Bellon at 3. The “core” area of the project is approximately 35 km. by 20 km., with a “buffer” area extending an additional 15 km. to the east and west of the core area. *Id*. The core zone is “directly protected” under the TCP, while the buffer zone hosts human settlements and domestic livestock. *Id*. In addition to the protections afforded by the TCP, the core zone is protected by nature: its terrain is rugged, and, therefore, not easily accessible. *Lessons Learned* at 8. Consequently, the vegetation located there is in good condition, preserved in part by “natural factors.” *Id*. There is little threat of any natural destruction, modification, or curtailment of the markhor’s habitat or range.

The buffer zone is subject to grazing by domestic livestock. *Id*. Nevertheless, the local people “are aware of the potential problems of having excess livestock and are seriously interested in being involved in the formulation and implementation of range management plans.” *Id*. at 7. The local people view agriculture “as an alternative to raising livestock and a means by which grazing pressure and livestock-wildlife interactions can be reduced.” *Id*. at 11. Through the funds generated by the hunting program, STEP has helped to foster local agriculture and has plans to continue doing so. *Id*. In any event, the potential for over-grazing appears limited to the area outside of the core zone.

There is no significant risk that the markhor’s range, concentrated in the “core zone” of the program, will be destroyed, modified, or curtailed to the extent that it will have any negative effect on the markhor. In fact, on the contrary, the TCP has had a very positive effect on the markhor’s natural habitat for decades. According to STEP, “the conservation of all birds, plants, trees, bushes, shrubs, grasses, medicinal plants, mushrooms, fuel wood, etc., was also included into [the] biodiversity conservation plan. Cutting of live trees has been totally banned and fines have been fixed in case of violation.” CIC Markhor Award Appl. at 5. Consequently, the case study published by the Convention on Biological Diversity notes that the ecosystem has experienced an overall “phenomenal recovery.” *Lessons Learned* at 9. At least one new species has been discovered, and several others have been re-recorded. *Id*. This is evidence that the TCP is “regenerat[ing] the ecosystem as a whole.” *Id*.

The natural protections afforded by the rugged terrain of the area, coupled with the protections implemented by the TCP, result in a safe, healthy habitat for the markhor.

The foreign country’s program in this instance is designed to secure markhor habitat. The current listing conflicts with that program.

**B. Overutilization for commercial, recreational, scientific, or educational purposes:**

Under the TCP, the risk of markhor overutilization is nil. An annual harvest of 1%-2% is acceptable to maintain a healthy, viable population of markhor. Frisina & Tareen at 149 (2009). *See also* 68 F.R. 49515 (Aug. 18, 2003) (“the markhor population . . . is considered to be of adequate size and condition to sustain a small (1-2% of the population) annual trophy harvest). Nevertheless, the TCP allows an *even smaller* number of hunting permits each year. “STEP does not consider it appropriate to harvest the total allowable number of animals for trophies as a means to finance the socio-economic development of Torghar.” Bellon at 12. *See also id*. at 22 (Despite the fact that experts recommended a sustainable trophy harvest of up to 18, the TCP allowed an annual trophy hunt of only 1-2 markhor until 2004, raising that number only slightly in 2005-2006.).

Furthermore, the number of markhor that may be exported annually is strictly regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora. (See discussion below.) These regulations, coupled with the local people’s financial stake in the process and their desire to foster the markhor’s success, result in a very low risk of overutilization. This is evident given the steady proliferation of markhor over the past 25 years of underutilization.

As discussed below, there are no other uses for markhor that “provide the same economic return per animal harvested” as does the permit-hunting system implemented by the TCP*. Lessons Learned* at 12. Were there a risk of overutilization for any purpose (commercial, scientific, recreational, educational or otherwise), the markhor population numbers would have reflected this as some point over the last 25 years. On the contrary, these numbers have steadily grown, indicating that the markhor is thriving, and is not being “overutilized” for any purpose.

Note that the funding from the hunting has eliminated the poaching, local recreational use and all commercial use. Moreover, the continued listing is in conflict with that successful program.

**C. Disease or predation:**

Straight-horned markhor have a relatively long life span, reproduce at a high rate for their body size, adapt well to harsh climate conditions, and are not very susceptible to predators. Bellon at 21. In fact, many, if not most of the markhor’s natural predators have been eliminated from the area. The same influx of modern weapons and ammunition (fueled by the Afghan war) that so severely affected the markhor in the 1980’s also had a devastating effect on the other wildlife of the region. *Id*. at 5. For example, leopards, which were once abundant in Torghar, have been completely eliminated and are now extinct from the region. *Id*. Therefore, markhor are able to proliferate virtually unchecked. With poaching eliminated and very few natural predators in the region, controlled culling *via* regulated hunting helps to maintain a healthy markhor population.

Similarly, markhor are not threatened by any significant risks of disease. The domestic livestock of the region are prone to various diseases, but there is “no evidence of disease transmission from the domestic livestock to the wild Caprines.” M.H. Woodford, M.R. Frisina, & G.A. Awan, *The Torghar Conservation Project: Management of the Livestock, Suleiman Markhor (*Capra falconeri*) and Afghan Urial (*Ovis Orientalis*) in the Torghar Hills, Pakistan*. Game and Wildlife Science, Vol. 21(3), 184 (2004). Nevertheless, to improve the health of the local domestic livestock and thereby further minimize the risk of disease to the markhor, STEP has formulated a “Community-based Animal Health Service” for the domestic livestock within the TCP area. *Id*. at 185. Under this plan, as agreed to by local herdsmen, a small number of young tribesmen will be trained as “barefoot vets” and will travel throughout the project area, administering vaccines and “appropriate anthelmintics” (antiparasitic medications) to domestic sheep and goats. *Id*.

In sum, markhor are hearty animals, not subject to any significant disease- or predator-related risks. This is evidenced by their sustained population growth over the past twenty years. As long as poaching is kept in check, markhor are able to survive quite well in their native range.

**D. Inadequacy of existing regulatory mechanisms:**

**1. Local regulations**

Torghar is located in an area of Pakistan that was traditionally governed by a mix of federal, provincial, and tribal laws. Bellon at 6. Although this has changed and the tribal areas are now subject to governmental regulations, governmental institutions have met local resistance to such laws, especially those concerning hunting. *Id*. Therefore, the TCP’s ability to incorporate the local tribesmen into the process and garner their support is especially noteworthy and effective.

The TCP has done an outstanding job of re-establishing the markhor population in the Torghar Hills, and the Fish and Wildlife Service has acknowledged that fact. In response to the downlisting petition submitted in 1999, the Service published the following statement in the Federal Register:

We find that the petition presents substantial information indicating that the [downlisting] may be warranted. This finding is based on the overall size and documented growth of the Torghar Hills population of straight-horned markhor over the past 14 years, the management program called the Torghar Conservation Project, whose game guards have virtually eliminated unauthorized hunting within the 1,500 sq. km. project area, and the relative security of markhor habitat in the Torghar Hills.

64 F.R. 51500 (Sept. 23, 1999). This reasoning still applies, over ten years later, as the program has seen continued success and the markhor population has continued to increase.

More recently, the Service has acknowledged the adequacy of the TCP in its Draft Policy of Enhancement-of-Survival Permits for Foreign Species Listed Under the Endangered Species Act, citing the TCP as an example of a “well-managed conservation program[] that limit[s] removal from the wild and further promote[s] and advance[s] the conservation of the species” (68 F.R. 49512 (Aug. 18, 2003):

[T]he Torghar Hills region of Pakistan has a successful community-based management program that has **significantly enhanced** the conservation of local markhor populations[.] Allowing a limited number of U.S. hunters an opportunity to import trophies taken from this population could provide a **significant increase in funds available for conservation and would provide a nexus to encourage continuation and expansion of the project into other areas.**

68 F.R. 49515 (Aug. 18, 2003) (emphasis added). “Certainly,” to quote the Service, “the United States should endeavor, when possible, to **recognize the conservation programs of foreign countries, when based on sound science**.” 63 F.R. 25504 (May 8, 1998). *See also id*. at 25510 (“Since the Service cannot develop recovery plans for foreign species, priorities for listing or delisting **must by necessity take into account the conservation programs of other countries** in determining which actions are of higher priority.”).

Moreover, the Endangered Species Act mandates that foreign programs be taken into account. Specifically:

The Secretary **shall** make determinations required by [§1533(a)(1)] solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and **after taking into account those efforts**, if any, being made by **any State or foreign nation, or any political subdivision of a State or foreign nation**, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices[.]

16 U.S.C. §1533(b)(1)(A), *Basis of Determination* (emphasis added).

For 25 years, the TCP has succeeded in regulating the number of hunts available, eliminating poaching, and fostering the markhor population in the Torghar Hills. The TCP is a strong program, based on sound science. Furthermore, there are few opportunity costs associated with the program, “because the project does not utilize any resources that might be better-used for other conservation activities, and the project does not preclude any other viable management options that might contribute to maintaining the Markhor and Urial populations. There are no other viable consumptive uses for Markhor and Urial that provide the same economic return per animal harvested.” *Lessons Learned* at 12.

It should be noted that the hunting program funds the regulatory process and the listing conflicts with that program.

**2. International regulations**

In addition to the standards and regulations enforced by the TCP, trade of markhor is strictly regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). *Capra falconeri* is listed on CITES Appendix I, and therefore it is protected by the most stringent regulations. In 1997, at their Tenth Conference, the Parties to CITES approved an export quota of six markhor trophies from Pakistan per calendar year, along with very specific guidelines for importing countries to follow in reviewing and approving import applications, as well as an annual reporting requirement by Pakistan. Res. Conf. 10.15 (1997); *see also* Doc. 10.84 (Rev.) (providing “population survey data” and “biological basis for supporting a limited export quota of markhor trophies from Pakistan” and stating that “[t]he TCP population of markhor is of adequate size and condition to continue supporting limited trophy hunts.”). In keeping with the ever-increasing number of markhor, and to expand the model into other tribal areas, the annual quota now stands at 12.[[3]](#footnote-3) *See* Resolution Conf. 10.15 (Rev. CoP14).

Please note that the ESA was enacted “to take such steps as may be necessary to achieve the purposes of…CITES.” 16 U.S.C. 1531(b). We respectfully suggest downlisting will be supportive of the CITES quota.

Conservation Force attended the CITES CoP as a registered NGO and witnessed the support for the quota. Pakistan stated that denial of the quota would deny it the “single most effective conservation tool at our disposal.” Japan agreed that the sport hunting program would help “provide a stronger incentive” for conservation. Saudi Arabia stated that it would “benefit the local community a great deal and lead to conservation of the species. Zimbabwe likened it to its own successful CAMPFIRE Program. The U.K., who had made the proposal for markhor listing on Appendix I at CoP 8, stated that it never intended to prevent the hunting program and stated its support because it “would be beneficial.” In fact, Com. 1 8.11 from CoP 8 expressly states that “they (Pakistan) were reassured that Appendix I listing would not prevent such hunting.” Indonesia supported the proposed quota because it was biologically insignificant and the local community would benefit from conserving the species and its habitat. Singapore said it was a form of “good ecotourism” and it would help save anti-poaching costs of rangers. The United States agreed in its floor statement that the quota was a “conservative one and certainly not detrimental.” Uganda stated that “this is the basis upon which conservation should be done” and that the local people will determine the survival of the species. China complemented Pakistan on its program. Yemen, RSA, Brazil, Egypt, Zambia, Russia, Nepal and others all felt strongly enough to speak out in favor of the quota.

Resolution 9.21 and Res. 2.11 (Rev. CoP 9) governing quotas expressly provides that the quota should be accepted by importing nations as a non-detriment finding made by the conference and that the biological non-detriment finding by the management authority in the country of origin should be favored by importing nations. “[A]doption by the Parties of a quota for export of an Appendix I species normally constitutes assurance to the exporting country that exports within the established quota will be accepted by importing countries…” 62 F.R. 44628. The Study on How to Improve the Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), September 1996, expressly recognized “that reducing or eliminating trade in a species remains a short-term conservation measure.” Sustainable use is the long-term solution. The USF&WS has long recognized that community-based sustainable use programs like CAMPFIRE are the long-term solution. (See Rule denying the ESA “endangered” listing of the African elephant.)

The world-renowned sustainable use program in place in Pakistan is dependent upon the export-import of hunting trophies. They are projects funded by GEF and the world community. The projects are being implemented by IUCN, WWF, WCS and others. The issuance of trophy import permits is very important to the conservation of the markhor and has been from the inception. It is a coordinated effort to encourage the species’ conservation. The program has been deliberately designed to reduce poaching, create conservation incentives and generate operating revenue for those that will ultimately decide the fate of the markhor. International regulation is an additional reason to downlist to “threatened.”

Together, the laws of Pakistan, the regulations on hunting imposed by the TCP, and the CITES quota and non-detriment determination are more than adequate to protect the straight-horned markhor. Again, this has been proven and continues to be proven by the fact that these animals have flourished since the inception of the TCP 25 years ago.

**E. Other natural or manmade factors affecting the straight-horned markhor’s continued existence:**

At this point, one major hurdle stands in the way of the straight-horned markhor’s continued success: its listing as “endangered” in the United States, the world’s largest conservation hunting market. This listing creates a legal web that makes import of these trophies unnecessarily complex and, to date, impossible. The Service has acknowledged this fact:

In some situations, **listing under the ESA may provide few, if any, additional benefits** and may **complicate the implementation of conservation initiatives under other international authorities**, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora[.]

68 F.R. 49513 (Aug. 18, 2003) (emphasis added). As long as the markhor remains listed as “endangered,” the only way for an American hunter to import his or her lawfully taken markhor trophy is through the granting of an enhancement permit, *via* 16 U.S.C. §1539(a)(1). Although the Service has stated its intent to issue such permits, it has not. *See id.* As the Service has stated:

[O]ne of the few available means for encouraging the conservation of foreign endangered species is through our decisions about whether to issue import permits. . . . However, this permitting authority is **not being fully used** even though it is **internationally recognized as one of the most effective conservation tools employed by CITES and other multilateral international agreements**. . . . The **traditional, narrow approach** to enhancement findings for actions that would result in the killing for removing from the wild of a foreign endangered species has **precluded the use of the import permit as a proactive tool and incentive for foreign species conservation**.

*Id*. at 49513-14 (emphasis added).

The inability to bring their hunting trophies home creates an obvious disincentive for American hunters to participate in the TCP. This decreased participation both reduces the number of hunts and keeps the price (revenue) of hunting permits artificially low. By its own admission, the Service has acknowledged that its listing of the markhor has hampered the progress of foreign conservation programs, and has expressly named the TCP as a program that could and would benefit if U.S. hunters were allowed to import their trophies. *See id*. at 49515. This is apparent from the fact that other species of markhor, which *are* importable into the United States, command much higher hunting permit prices (Kashmir markhor up to $150,000 U.S. dollars per hunt) than the Suleiman markhor. This is senseless, considering the beauty of the Suleiman markhor and the limited number of hunts available; yet, since U.S. hunters have been unable to bring their trophies home, they are unwilling to pay a premium fee. If American hunters were allowed to import Suleiman markhor trophies, however, they would be willing to pay thousands of dollars more, money that would directly benefit the TCP and the species as a whole.

The straight-horned markhor population of the Torghar Hills has recovered. It is no longer “endangered” and should not be treated as such. *See* 63 F.R. 25510 (May 8, 1998) (“Once it is determined that the Act’s protections are not longer appropriate, it is important that delisting or reclassification proceed[.]’). In fact, failure to downlist this species could lead to the markhor’s return to endangerment. The markhor, the TCP and the local people need the United States’ cooperation in ensuring their continued success. It is important to recognize the model, reward the participants, and cooperate with the existing program. Otherwise, the program cannot reach its potential and is a perverse or negative model, i.e., a disincentive to all.

The downlisting would recognize the program, act as an incentive that would motivate others to restore the species, and increase the revenue for the markhor’s enhanced conservation. The IUCN *Policy on Sustainable Use* provides that “Sustainable use is an important conservation tool because it provides people with incentives in the form of social and economic benefits.” The *Addis Ababa Principles and Guidelines of the Convention of Biological Diversity* practical principle calls for “supportive policies…at all levels of governance…to enable a ‘pathway’ to be developed which allows…sustainable use of a resource to proceed from collection or harvest through to final use without unnecessary impediment.” Principle 3 advises the identification and avoidance of “unnecessary regulations.” They “should be identified and removed or mitigated.”

Congress has long recognized these principles under its guidance on administration of the ESA. Congress, during the ESA amendments of 1982 provided that the ESA should not obstruct trophy imports of “endangered” species which “should” be allowed in such instances when the import assists with the species.

The Committee also received testimony stating that “the Secretary has listed some foreign species as endangered throughout their entire range without considering whether their population status varies from country to country.” There may be nations where a combination of a healthy population and effective management programs permit the sport hunting of such species without adversely affecting its status. The failure to recognize this may result in the foreign nations being denied much-needed revenues derived from license fees that are used to fund their wildlife conservation and management programs. If the Secretary is in receipt of biological information from a foreign nation with respect to a resident game species listed as “**endangered**,” he should evaluate the status of such species within the country in question. The evaluation should consider the effectiveness of management programs such as artificial propagation, and whether these programs permit sport hunting of listed species in nations where it otherwise might be detrimental to the species. The evaluation should also determine whether the specific country in question has a management program for the species, whether the species’ population can sustain a sport hunting harvest, and whether the sport hunting enhances the survival of the species. If the Secretary determines that sport hunting in such country will assist in the conservation of a listed species, he should issue appropriate regulations to facilitate the import of sport-hunted trophies of such specimens. **The above-mentioned criteria should be taken into account in future listings of game species as well.** (Senate Report No. 97-418. Emphasis added.)

The principal goal of the administration of the ESA is to return listed species to a point at which protection under the Act is no longer required. In the case of foreign species, the USF&WS is limited in the effective steps it can take. The issuance of import permits will contribute to the long-term survival of this species and its permanent elimination from its “endangered” listing. That is submitted to constitute “enhancement of the propagation or survival of the species” for which the Secretary may and should issue import permits. This is a long-term benefit for which there is no substitute. Since the Service has a policy against the issuance of permits for trophies of endangered species, it should downlist the markhor of Pakistan.

The Service has recently recognized that the listing of foreign species is of limited benefit and much less benefit than domestic species listing. Final Listing Priority Guidance for Fiscal Years 1998 and 1999, 63 F.R. 891, May 8, 1998 citing comment made by Conservation Force. The Service recognized that an ESA listing “may have potential conservation detriment for some species” and that “[c]ertainly, the United States should endeavor, when possible, to recognize the conservation programs of foreign countries, when based on sound science.” “Since the Service cannot develop recovery plans for foreign species, priorities…must by necessity take into account the conservation programs of other countries….” The Service recognized that “with regard to foreign game species, fees from trophy hunters can, in some cases, provide economic incentives for landowners to maintain healthy populations of game animals.” “A large percentage of international hunters are Americans who might invest in the hunting program if the species…import was permitted.”

There is a special need and obligation to other nations to act responsibly when a species listing conflicts with the recovery and/or management program of another nation for its species. This obligation is an inherent part of the duty to bring listed species to a status in which they are no longer listed. It is a heightened obligation because the ESA does not provide benefits for recovery of foreign species as it does for domestic species.

Aldo Leopold understood well that the “marketing of game crops…activated the financial incentive to produce them…” In The American Game Policy of 1930, it was fully recognized that “landowners bear the **costs** of wildlife on their land and must derive revenue for it to survive and flourish.” Leopold stated back in July of 1925, American Game, what the extremists don’t yet know:

We have learned that game, to be successfully conserved, must be positively produced, rather than merely negatively protected.

**Conclusion**

The U.S. Fish and Wildlife Service has recognized the TCP’s excellence on more than one occasion, and issued a positive 90-day finding regarding downlisting the markhor over ten years ago. Since that time, the markhor population has continued to flourish, so the reasoning and rationale that applied then are even stronger today. Therefore, in light of all of the information included herein and all of the documents attached hereto, Petitioners respectfully request and recommend that, based on facts and sound science, the Service downlist the straight-horned markhor of the Torghar Hills from “endangered” to “threatened.”

Petitioners further request that the Service make the required 90-day and 12-month findings timely, in accordance with 16 U.S.C. §1533.

Respectfully submitted,

John J. Jackson, III, Legal Counsel on behalf of Petitioners

Conservation Force

3240 S. I-10 Service Rd. W, Suite 200

Metairie, LA 70001

(504) 837-1233

**Index of Attachments**

*for Petition to Downlist Straight-Horned Markhor of Torghar Hills*

*from “Endangered” to “Threatened”*

**Case Studies and Literature**

1. *Biodiversity, Development, and Poverty Alleviation: Recognizing the Role of Biodiversity for Human Well-Being*, Convention on Biological Diversity (2010);

[www.cbd.int/doc/bioday/2010/idb-2010-booklet-en.pdf](http://www.cbd.int/doc/bioday/2010/idb-2010-booklet-en.pdf).

1. *Case Study C0226: Conservation of Biodiversity with Community Development*, on “Poverty and Conservation” <http://www.povertyandconservation.info/en/case/C0226.php>.
2. *Conservation of Biodiversity with Community Development (PAK/95/29)*, on “United Nations Development Programme” (2006) <http://sgp.undp.org/web/projects/302/conservation_of_biodiversity_with_community_development.html>.
3. *Green Pioneers: Stories of the Grass Roots*, “Ch. 13: Tribal Leadership Paves the Way, Sardar Naseer A. Tareen” by Rina Saeed Khan (2002) (relevant chapter located at <http://www.un.org.pk/undp/sgp/green-pioneers/chap-13.htm>).
4. *Lessons Learned: Case Studies in Sustainable Use: Conservation of Sulaiman Markhor and Afghan Urial by Local Tribesman in Torghar, Pakistan*,

[www.cbd.int/doc/case-studies/suse/cs-suse-iucn-thorgar.pdf](http://www.cbd.int/doc/case-studies/suse/cs-suse-iucn-thorgar.pdf).

1. Luc Bellon, *A Treasure in My Backyard: Suleiman Markhor* (2008).

*Note: Bellon’s case study is also included in the 2008 publication* Best Practices in Sustainable Hunting: A Guide to Best Practices from Around the World.

1. M. Arshad and M. Samar Jussain Khan, *Fall Survey of Suleiman Markhor (*Capra falconeri jerdoni*) and Afghan Urial (*Ovis orientalis cycloceros*) in the Torghar Conservation Project, Killa Saifullah, Balochistan* (April 27, 2009).
2. M.H. Woodford, M.R. Frisina, & G.A. Awan, *The Torghar Conservation Project: Management of the Livestock, Suleiman Markhor (*Capra falconeri*) and Afghan Urial (*Ovis Orientalis*) in the Torghar Hills, Pakistan*. Game and Wildlife Science, Vol. 21(3), 177-187 (2004).
3. Michael R. Frisina & Sardar Naseer A Tareen, *Exploitation Prevents Extinction: Case Study of Endangered Himalayan Sheep and Goats*, in *Recreational Hunting, Conservation, and Rural Livelihoods* (Barney Dickson, Jon Hutton, & William M. Adams ed., 2009).
4. Nicolas Chappaz, *Restoration of Suleiman Markhor and Afghan Urial Populations by Local tribesmen in Torghar, Pakistan*, on “The Open Earth Project” (March 8, 2004)

<http://www.openearth.org/document/natureR_main.php?natureId=123%20%20&PHPSESSID=a64bdd1b9cfa5d10b252a5205884da8a>.

1. Shackleton, David. *Wild Sheep and Goats and Their Relatives: Status Survey and Conservation Action Plan for Caprinae* (1997).
2. D. M. Shackleton, *A Review of Community-Based Trophy Hunting Programs in Pakistan* (January, 2001)

**Convention on Biological Diversity**

1. “Expert Meeting on Mainstreaming Biodiversity in Development Cooperation”, May 13-15, 2009, Montreal, Canada;

<http://www.cbd.int/development/presentations/emmbdc-01/2009-05-13-scbd-09-en.pdf>.

1. *Pakistan: Fourth National Report.* Government of Pakistan, Ministry of Environment, Islamabad, Pakistan. (2009); <http://www.cbd.int/doc/world/pk/pk-nr-04-en.pdf>.
2. Statement from the Executive Secretary Ahmed Djoghlaf on the occasion of the 2008 CIC Markhor Award Ceremony for Outstanding Conservation Performance, 27 May 2008, Bonn, Germany; <http://www.cbd.int/doc/speech/2008/sp-2008-05-27-markhor-en.pdf>.

**Convention on International Trade in Endangered Species of Wild Fauna and Flora**

1. CITES National Export Quotas for 2010.
2. Doc. 10.84 (Rev.).
3. Res. Conf. 10.15 (1997).
4. Res. Conf. 10.15 (Rev. CoP14).

**Downlisting Petition of 1999 and Supporting Documents**

1. Tareen Petition (Feb. 27, 1999).
2. Kurt A. Johnson, *Status of Suleiman Markhor and Afghan Urial Populations in the Torghar Hills, Baluchistan Province, Pakistan*.
3. M.R. Frisina, C. Woods, and M. Woodford, *Population Trend of Suleiman Markhor (*Capra falconeri jerdoni*) and Afghan Urial (*Ovis orientalis cycloceros*) With Reference to Habitat Conditions, Torghar Hills, Baluchistan Province, Pakistan*; A Report to the U.S. Fish and Wildlife Service, Office of International Affairs, and the Society for Torghar Environmental Protection (STEP) (1998).
4. Rules and By-laws of the Society for Torghar Environmental Protection.

1. “Supportive Documentation to accompany the Petition to downlist the Suleiman markhor in the Torghar Conservation Area, Balochistan, Pakistan” (Introduction, Summary, and References).

**Federal Register Notices and Comment**

1. 63 F.R. 25502, 25510 (May 8, 1998).
2. 64 F.R. 51500 (Sept. 23, 1999).
3. 68 F.R. 49512, 49515 (Aug. 8, 2003).
4. Conservation Force: *Comment on Markhor ESA listing 64FR51499* (Jan. 17, 2000).

**International Council for Game and Wildlife Conservation (CIC)**

1. Announcement: TCP is recipient of 2010 Markhor Award, International Council for Game and Wildlife Conservation; <http://www.cic-wildlife.org/index.php?id=551>.
2. CIC Markhor Award Submission, Society for Torghar Environmental Protection (STEP’s Application for 2010 Markhor Award).
3. “Sustainable Hunting Tourism Can Reverse Biodiversity Loss: Grassroots Project in Pakistan Honoured by the CIC,” International Council for Game and Wildlife Conservation; <http://www.cic-wildlife.org/index.php?id=559>.

1. “Sustainable Use of Biodiversity: The Torghar Model” COP-CBD, Bonn, Germany, May 22, 2008; <http://www.cic-wildlife.org/uploads/media/03_CICESUSG_Tareen.pdf>.

**Miscellaneous**

1. Central Asia SUSG Project wins GEF Funding
2. Comment of SUSG on Draft Enhancement Policy
3. III World Conference on Mountain Ungulates; Saragossa, Aragon, Spain (June 10-15, 2002)

1. Although once considered distinct, *C. f. jerdoni* and *C .f. megaceros* are today considered to be of the same subspecies. *See* 64 F.R. 51499. [↑](#footnote-ref-1)
2. This petition includes only information pertinent to the downlisting of straight-horned markhor. It should be noted, however, that the TCP focuses on both markhor and urial, a species of wild sheep. [↑](#footnote-ref-2)
3. This trade quota represents the *total* number of markhor trophies from Pakistan (*not* the number of *straight-horned* markhor trophies) that may be exported from Pakistan each year. [↑](#footnote-ref-3)