



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 May 2016

USFWS Accepting Comments on Reclassification of African Elephant as Endangered

On March 16, 2016, the US Fish & Wildlife Service (USFWS) published Notice that it had made a positive 90-day finding on two petitions to reclassify all African elephant from "threatened" to "endangered" under the ESA. 81 FR 14058. The USFWS has opened a comment period as part of its review of the elephant's status and the five listing criteria. Anyone – experts, range nations, average citizens – is invited to submit information about the status of the African elephant that would support or challenge the proposed up-listing. The comment period is only 60 days and closes at 11:59 pm Eastern Standard Time on May 16, 2016.

The USFWS' recent 90-day decision is only a finding that the two petitions present substantial scientific or commercial information indicating that the up-listing to endangered *may be warranted* and thus the elephant's status should be reviewed. It is not a decision to change the listing yet. Sometime after the comment period closes, the USFWS will make a 12-month determination that the petitioned reclassification is warranted or not. If warranted, the USFWS will Notice its own proposal to reclassify the species, and call for the second and last round of comments to guide its final determination. Alternatively, the USFWS may find the petitioned reclassification is not warranted or propose some alternative.

The 90-day finding took 13 months to make. The 12-month finding (the next step) will probably take one to two or more years. Then, if the USFWS proposes to reclassify the elephant or to make some other change to its status,

DATELINE:
United States



John J. Jackson III

that Final Rule will take at least one, but probably two or more years following publication of the proposal before it is Noticed as final. Statutorily, it would then be 30 or more additional days before the final rule becomes effective. In short, any change in the elephant's status will become effective far off in the future. But, if reclassified as endangered, hunting trophies will no longer be importable into the USA.

The 90-day finding to "initiate" a review of the listing classification was in response to two petitions. (Both can be found in the Supporting Documents section of www.regulations.gov, Docket No. FWS-HQ-ES-2016-0010.) The first was dated February 11, 2015 and received by the USFWS on February 12, 2016. It was filed by the Humane Society International, the Humane Society of the United States, the International Fund for Animal Welfare, and the Fund for Animals. (In short, the HSUS and its two affiliates (HSI and FfA) and IFAW.) This petition asks that all elephant in Africa be EMERGENCY listed as endangered, but the USFWS denied that request by a letter dated June 17, 2015. The petition is 130 pages and alleges that the elephant meets four of the five criteria for being listed as endangered. It quotes a 2014 CITES Standing Committee document that states: "poaching numbers in Africa remain at levels that are unsustainable,

with mortality exceeding the natural birth rate, resulting in an ongoing decline in African elephant numbers." Of course, its introduction asserts that the reclassification to endangered status would stop the "unnecessary killings for sport" to "help this species recover."

The second petition was filed by the Center for Biological Diversity (CBD) on June 19, 2015. It differs from the first in that it requests the African elephant be treated as two different species and that both species be listed as endangered. The two separate species are the forest elephant (*Loxodonta cyclotis*) and the savannah elephant (*Loxodonta africana*). The petition states that both species exist in Western and Central Africa, only the savannah elephant exist in Eastern and Southern Africa, and all should be reclassified as endangered. This petition also differs from the HSUS petition in that it did not ask for an emergency up-listing. However, it alleges that fewer than 400,000 savannah elephant and 100,000 forest elephant remain in the wild.

Like HSUS and IFAW, the CBD claims that elephant meet four of the five listing criteria (any one of which warrants an endangered listing): habitat loss and degradation, overutilization, inadequacy of existing regulatory mechanisms, and other natural or manmade factors. Only the listing Factor for disease and predation is not alleged to endanger the elephant and is not found to warrant listing review.

Of note, both petitions cite information and display charts that poaching peaked in 2011, and has declined since that onslaught. Since the petitions were filed, the poaching has



slowed even more, and more areas have population growth rates that exceed the illegal offtakes. The level of poaching is once again returning to sustainable levels. Elephant are recovering (but not yet enough).

There are some interesting if not ironic points made by the CBD in their petition. In their section under listing Factor A, the Modification or Curtailment of Habitat or Range, page iii, CBD claims that "Fencing is also a prevalent problem for their [elephants'] movement..." In fact, the CBD has a whole section entitled "Fencing and Other Barriers," see page 32. "As a result of this confinement, elephant populations grow unnaturally quickly, and they over-exploit their habitat leading to a spiral of habitat destruction and inhospitable conditions for elephants..." The irony of this statement by CBD is that a significant number of reputed lion scientists are publishing and clamoring for the complete fencing of prime lion habitat including the largest protected areas in Southern and Eastern Africa as necessary to save lion. Lion, more than elephant, reproduce like rabbits

and quickly exceed habitat capacity. Yes, you guessed it, the CBD recently supported the listing of the lion as endangered, not just threatened. Such a listing would have ended all lion trophy imports.

Once again, the CBD makes no bones about being opposed to safari hunting. I quote them here in some detail so there can be no doubt of where they stand. Preceding the "legal" section, pages 63 and 64, the CBD claims that "trophy hunting does nothing to reduce human-elephant conflict ... and is contrary to conservation efforts. Justifying trophy hunting by its price tag only further encourages the commercialization of imperiled species, which is exactly what makes elephants imperiled in the first place. Additionally, when wildlife is viewed as a commodity

only available to a wealthy few, then the animals are tied only to their market value while ecological conservation objectives for the species are ignored.... Investigations and common sense tell us that eventually many of these trophies will end up for sale on the Internet or at auction, without proper documentation..." To the contrary of the CBD's position, the elephant has been listed because unlawful trade/poaching has been out of control and excessive. Though poaching has off and on been unsustainable, regulated safari hunting trade has been endorsed as a valuable conservation tool.

Then again on pages 68 and 69 of their petition, they rage against hunting. "In the past, FWS has concluded that funds from trophy hunting supported the conservation of the species, but there is very little information on if this funding overrules the consequences of allowing an imperiled species to be considered a commodity by the international community. And, in the case of elephants, tourism revenues dwarf trophy hunting revenues [in] Namibia, Botswana, and South Africa. The only country in Southern Africa

still boasting high elephant numbers that truly relies on these revenues is Zimbabwe ... And FWS suspended imports of sport-hunted elephant trophies from there last year due to poaching and the inability to make a 'not detrimental to the species' finding under CITES' guidelines." This is a wholly incorrect quote from a USFWS press release. Zimbabwe elephant hunting trophies are on Appendix II of CITES, so no non-detriment determination is necessary or authorized under CITES or US law. Instead, the USFWS failed to make an "enhancement finding" under the ESA, not CITES, and each of the USFWS' stated reasons have since been refuted or addressed.

Back to the CBD: "There are ethical dilemmas with allowing one to pay to hunt an animal, and not allowing one

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to pay to buy the animal product. With current levels of ivory trade, we must exterminate the notion that African elephants can be sold." Of course, this is confusing unlawful trafficking with licensed, regulated trade and take for personal use with higher volume take for commercial sale.

The Branch of Foreign Species, Ecological Services, USFWS used a new Petition Review Form (available on the Docket) to evaluate the two petitions. That protocol breaks down the alleged threats to see which are supported by enough information to

be the possible basis to warrant a status review. Of note, "fencing and other barriers" is cited as a Factor A, Habitat, threat. Factor B, Overutilization, was also recognized to warrant review, but that was "commercial" utilization, not "recreational" utilization. The ranting against regulated safari hunting did not meet the test. The petitions and information cited in the petitions warranted review under Factors D (Inadequacy of Existing Regulatory Mechanisms) and E (Other) as well. They did not warrant review under Factor C, Disease and Predation, which petitioners did not allege. In short, four of

the five listing Factors warranted review and will be the focus. The separation of forest and savannah elephant for listing purposes has not been decided at this point but is to be part of the review and calls for substantive comment.

Conservation Force will be working with the elephant range states to defeat the petitions and confirm the current threatened listing. Unfortunately, the elephant range countries are preoccupied with the upcoming CITES CoP 17 that is scheduled in RSA, September 24 to October 5, 2016. That will be challenge enough. ■

Lion (and Leopard) Workshops – Kasane, Lusaka, Maputo and Dar es Salaam

In the fourth week of March, Conservation Force attended a lion workshop with 90 lion specialists in Kasane, Botswana. The workshop was a function of the African Lion Working Group (ALWG). Conservation Force Board Members Philippe Chardonnet and yours truly have belonged to the ALWG for more than a decade and deceased board member Bertrand des Clers also belonged.

All attendees at the Kasane meeting avoided being distracted with the debate over hunting versus protectionism/animal rights, but for one related topic. The agenda item was: "What is the alternative to hunting?" No realistic alternative was suggested or disclosed to provide the habitat and prey, the wildlife department operating and anti-poaching revenue, or the stakeholders' support, to take the place of hunting. I probed day and

night for four days without finding any substitute for safari hunting. One insightful speaker pointed out that "there are enough lions to satisfy photographic tourist, but never enough" for hunting interests. Safari hunters want more lion; we want to grow lion numbers.

It was also recalled that during the Regional Workshops (in the mid-2000s) the wildlife departments/ government authorities agreed to maintain the then-current number of lion but had no interest in growing the number of lion. Lion are unwanted beast that have desperately needed the special interest of hunters for their space, prey and survival. As one scientist has said, "the lion needs hunters as much as the hunters need the lion." Conservation Force is holding on for dear life to what we can save.

As I write this Marco Pani is

attending a lion workshop in Lusaka, Zambia in preparation for reopening lion hunting in Zambia. He is there on behalf of Conservation Force on a number of lion issues for the second time in two months. Quotas are being determined, the necessary aging system is being instituted, and leopard are being discussed as well. Meanwhile, Philippe Chardonnet is finishing up the update of the national lion action plan in Mozambique and organizing an action plan update workshop in Tanzania as soon as funding can be found.

Look for more activity on leopard because while at the CITES Standing Committee in Geneva in January, the co-chairs of the IUCN Cat Specialist Group disclosed that a worldwide action plan for leopard is in preparation. It is to be released this summer and will include additional conservation



March lion workshop of the African Lion Working Group in Kasane, Botswana.

measures for leopard, including, apparently an age system approach. My initial concern is to caution against overreaction including rushing into impractical standards and draconian penalties. Hunters can be and have been our own worst enemies. What we compromise is not our own world as much as that of our children and grandchildren and the places and wildlife we care so very much about. ■



Modernizing the Pittman-Robertson Act

On March 22, the Congressional Sportsmen's Foundation held its first breakfast briefing of 2016 to discuss proposed legislation to modernize the Pittman-Robertson Wildlife Restoration Act of 1937. This issue is critical – the Act provides significant funding for state wildlife authorities. But the states' use of these funds is restricted, and recruitment of new hunters and shooters is not a currently permitted use. Because the average age of US hunters is steadily increasing, P-R funds will decline if younger generations do not engage in a sporting lifestyle and purchase the firearms and archery equipment that sustains the Act. Newly introduced legislation will allow states to use a limited amount of P-R funds for hunter and angler recruitment and therefore safeguard the future of this funding.

Background and Need for the Amendment

The Act is "the foundation of the American system of conservation funding." It directs revenues from excise taxes on firearms, ammunition and archery equipment to a Wildlife Restoration Fund administered by the USFWS. These revenues amount to hundreds of millions of dollars in conservation funding; in 2014, for instance, the states received over \$825 million (and a total of \$8 billion since

inception).

These revenues are apportioned among the states and may be used for purposes enumerated in the Act, including wildlife conservation, habitat acquisition and management, and hunter education and safety. Hunter and shooter recruitment is not currently a permitted use of funds. But the average age of those purchasing hunting licenses is steadily rising. If there are fewer hunters and shooters to purchase firearms, bows, ammo and arrows, the Wildlife Restoration Fund – and state wildlife management programs – will suffer.

To address this threat, on March 21 the co- and vice-chairs of the Congressional Sportsmen's Caucus introduced a bill to amend the Act to allow states to use up to 25% of P-R funds for recruiting, retaining, and reactivating hunters and recreational shooters. This amendment will ensure that funding for wildlife conservation keeps pace with the need. It will also bring the P-R Act in line with the Dingle-Johnson Act, which directs the use of taxes on boats and fishing equipment and already allows outreach "to improve communications with anglers, boaters, and the general public regarding angling and boating opportunities." 16 U.S.C. § 777a(2).

The briefing breakfast was well-

attended, including all four House co- and vice-chairs of the Congressional Sportsmen's Caucus. Each of them briefly explained why they support the proposed amendment and how it will benefit conservation. There were a number of US Representatives present, including Louisiana rep Garret Graves, who sits on the House Natural Resources Committee.

There were also a number of attendees from other conservation organizations. These groups are members of the American Wildlife Conservation Partners (AWCP), of which Conservation Force is a founding member. Presentations were made by Ron Reagan, Executive Director of the Association of Fish and Wildlife Agencies (AFWA), and Mitch King of the Archery Trade Association, among others. These speakers emphasized the importance of this amendment to the future of conservation funding for state wildlife agencies. Although not mentioned at the briefing, this amendment will also help attract new hunters and shooters, and combat the negative image of hunting that has circulated in mass media since the hunt of "Cecil" last July.

(The Breakfast Briefing is reported by attorney Regina Lennox, who attended on behalf of Conservation Force.) ■

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