



“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

The Legally Structured Role of Hunting and Fishing in the US and Abroad

A Speech by John J. Jackson, III at the Fifth Animal Law Institute,
Texas Law Center, Austin, Texas, April 8, 2005

(John J. Jackson, III Note: The subject of “animal law” is broader than the subject of “animal rights”, but it includes animal rights. Animal law is part of law school curriculum around the nation. A number of state bar associations have established “animal law” committees or sections. The American Bar Association has recently formed an Animal Law Section that is to soon have its first program in Chicago.

There are “animal law” courses at Yale, Harvard, University of Washington School of Law, Seattle University School of Law and Columbia. Those same university law schools also have separate “animal rights” courses as part of their curriculum. Whether part of an “animal law” course or a stand-alone course, I am sorry to say, animal rights as a legal concept continues to grow and take hold.

Inevitably, animal rights, cruelty and humane concerns are more likely to be discussed in “animal law”

courses in law schools than in Animal Law Section programs of state bar associations. Livestock, farm animals, dangerous animals and pets are the most common topics before state bar association sections. For that reason,



I accepted a recent invitation to make a presentation before the Texas Bar Association’s Fifth Annual Animal Law Program in Austin, Texas. Two of the other speakers were true animal rights lawyers from Washington State and Michigan, and the others were some-

where in between in philosophy. My own presentation served its intended purpose of giving the audience a better appreciation of the indispensable role of hunters and hunting, so I share it here. It is wise to recall that the whole wildlife system is also a system of laws that you ignore at your peril.

Most of the lawyers in the audience didn’t know and appreciate the importance of hunters and anglers. The faces in the audience reflected surprise that hunters and anglers pay more for non-game as well as biodiversity than all others in society combined. You will see that I repeated the point that 75 percent is 75 percent. After my presentation, some of the audience deducted that the annual killing of 8.9 billion animals on farms to feed America is the most heinous wrong; not the 140 million game animals that they allege are annually killed by US hunters. Virtually everyone in attendance was a vegetarian or vegan. No meat, chicken or fish was served at lunch.)

My presentation is not about livestock, farm animals or pets; it's about the conservation and management of our wildlife and wild places. I am here to help complete the full spectrum of animal law issues.

In the 20th century, America's wildlife system became the *envy* of the world. Commonly called the *North American Wildlife Model*, it has no equal today or in the history of the world. It is a user-pay system primarily funded by legally required hunting and fishing license fees, excise taxes on manufacturers of firearms, ammunition, archery equipment and motor-boat fuel taxes. The licensing and taxing of hunters and anglers provides an *indispensable* \$3.8 billion dollars per year in revenue to fund approximately seventy-five percent of state wildlife con-



servation budgets. That percentage is why it is indispensable.

The system has been the “backbone” of America's wildlife management and habitat success. (Director, USF&WS) It has restored America's 230,000 wild sheep, 1 million black bear, 1 million pronghorn antelope, 1.2 million moose, 1.2 million Rocky Mountain elk, 6.4 million wild turkeys, 36 million whitetail deer and up to 105 million waterfowl. (*America's Abundant Game* handout). It has also paid for the largest share of conservation of *non-game* species. Consequently, hunters and anglers have contributed more for wild non-game species than all others in society combined and continue to do so today. Yes, that naturally follows when seventy-five percent is paid by hunters and anglers. Seventy-five percent is seventy-five percent.

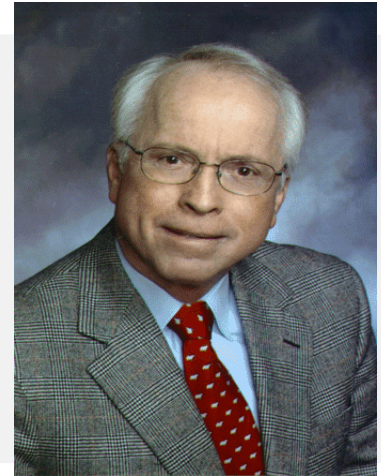
Whether you like it or not, it is “thank you American sportsmen and sports-women.”

This government management infrastructure is reinforced by non-government sportsmen's conservation organizations that also have no equal, such as Ducks Unlimited, the Foundation for North American Wild Sheep, Wild Turkey Federation, etc. America's hunters and anglers pay for the law enforcement. They pay for the research. They pay for the management. They pay for the habitat. There are an estimated 147 million different hunters and anglers that lawfully hunt and/or fish every 3 years in the US. They pay everyone and are themselves paid by no one. They are the givers, not the takers.

This user-pay system is the wildlife conservation paradigm and the status quo in North America. It has been the primary force for more than 100 years. All other claims are fiction.

It may be useful to compare this user-pay, sustainable-use system with other legal wildlife regimes. The benefits of this system are easily contrasted with those such as in some South American countries, where all hunting is illegal under those legal regimes - i.e., in principle all is protected. There are no revenues from hunting, so there is little revenue for law enforcement beyond the borders of limited protected areas, less research, less management infrastructure, less management and less habitat. The wildlife is used anyway, but that use is not harnessed to serve, conserve and to protect. The wildlife is poached. It is a poaching paradigm. The potential resource of hunting and fishing is not harnessed by the legal system to provide revenue and conservation incentives or to build and maintain a wildlife management infrastructure. That system proves that if you leave your house empty, thieves will move in.

The popularity of big game hunting in America has grown at an incredible rate over the past 50 years. Basically, it has tracked the rebounding growth in big game animal populations. Big game hunting has never been more popular. (*National Survey of*



JOHN J. JACKSON, III
Conservation Force



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World Conservation Force Bulletin

Editor/Writer

John J. Jackson, III

Publisher

Don Causey

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Conservation Force
One Lakeway Center, Suite 1045
Metairie, LA 70002
Tel. 504-837-1233. Fax 504-837-1145.
www.ConservationForce.org

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Hunting, Fishing and Wildlife Related Recreation, 2001). Those hunters and fisherman have spilled over into foreign countries. Many of the conservation managers in developing nations have been trained right here in the US. They employ all that they have learned. They have learned to use licensed, regulated tourist hunting to conserve wildlife and biodiversity. Unlike resident hunting here in the US, tourist hunting is much higher in revenue, and lower in volume, with even lower biological impact.

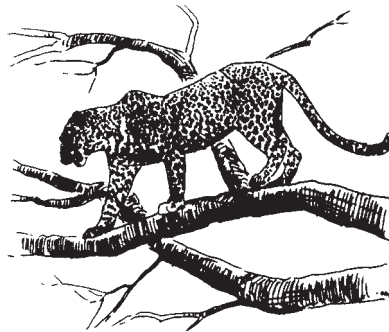
Tourist hunting and fishing now provide the revenue means of local and national management authorities and the local and national incentives for wildlife and habitat conservation abroad. The various legal strategies are purposefully designed to use hunting for conservation or to provide conservation through hunting. Game species are hunted to conserve them.

The role that sustainable use can have in conservation has been recognized and adopted as policy in the Resolutions of IUCN's *Second* (CGR2. Res. 2.29) and *Third World Congresses* (CGR3. Res. 073). It's embodied in most of the provisions of the Convention on Biodiversity (CBD), including the CBD adoption of the *Addis Ababa Principles and Guidelines of Sustainable Use* (Decision VII/12 - Article 10) and also in the CITES decision (COP 13) to utilize the *Addis Ababa Principles and Guidelines* as guidance in CITES own work.

The Convention in Trade of Endangered Species, CITES, recognizes the special role that recreational hunting and fishing can play by giving such trade in wildlife favored treatment. CITES prohibits all commercial trade of species listed on Appendix I, but not hunting and fishing trophies. Those trophies are taken for personal use, not commercial trade. The underlying activity is licensed, regulated hunting, not poaching. As early as the Second Conference of the Parties, COP 2, a resolution was adopted by the Parties, Resolution 2.11, that expressly favors trade in personal tourist hunting trophies. It was revised as recently as the 9th Conference, COP 9, Resolution 2.11 (rev.),

to further facilitate and remove unnecessary impediments to the export and import of hunting trophies of Appendix “I” listed species. Importing countries are requested by CITES to accept the export countries' hunting trophies and related biological and management-related decisions.

The required “non-detriment” determinations for trade in hunting trophies of Appendix “I” species still have to be made by exporting and importing countries, but that too has been facilitated by the development of quotas set by the Parties at the conferences. Quotas dispense with the need to make non-detriment findings on a case-by-case basis. The first such quota was for leopard, reflected in the current Resolution 10.14. The leopard quota permitted tourist hunters to bring their trophies home. It converted what was per-



ceived to be a vermin to a game animal. Leopard that would inevitably have been shot, poisoned or snared became trophies and hence one of the building blocks of the conservation infrastructure of those developing nations. The quota favored the limited, licensed regulated tourist hunting of leopards and turned that species from a liability into an asset that paid for its conservation and the conservation of other species as well. Normally, the hunting includes not just the leopard (a spotted cat that can reproduce like a rabbit) but also license fees for the many animals taken for bait that are very plentiful, minimum number of hunting days and other legal requirements that support the conservation infrastructure.

Similar quotas have been established by the Parties with the underly-

ing recognition of the benefits that can arise from the sustainable use of species, particularly game species. Other quotas, decisions, annotations and provisions have been established for Nile Crocodile, Cheetah (COP 8), Markhor (Res. 10.15), White Rhino and Elephant (Res. 10.10). Hunting trophy quotas have been accepted and set when the population of the affected species have been less than 2,000, as in the case of the Markhor in Pakistan's Targhor region. Such quotas have had remarkably positive conservation consequences. As Aldo Leopold said, “We have learned that it is necessary to positively produce as well as negatively protect if we are to successfully conserve wildlife”.

The licensed, regulated trophy hunting of white rhino listed on Appendix I has generated tens of millions of dollars. When the hunting began, there were fewer than 2,000 white rhino in existence. The white rhino population has grown more than seven-fold since that time. The revenue from the tourist hunting has provided the means to save the rhino and the motive as well. White Rhino have been hunted to conserve them. The management regime has been strategically designed to conserve wildlife through its use.

Now, the critically endangered black rhino has reached the population level of a few thousand, just as the white rhino had decades ago. At the last CITES Conference in Bangkok, COP 13, the 167 Parties to CITES adopted a trophy hunting quota for black rhino (Resolution 13.5). Quotas of five for Namibia and five for the Republic of South Africa were established. As a game animal, that rhino species has an edge on its own survival - i.e., a highly regulated second chance. The quota is intended to capitalize on that contemporary conservation strategy. As one African official recently told me: “I am not a hunter myself. We do this to save our wildlife and biodiversity.” They hunt them to save them.

It remains to be seen if the black rhino can benefit from tourist hunting as the White Rhino and other species have. Why? Unlike the white rhino, the black rhino is listed on the US Endan-

gered Species list as “endangered,” not just CITES Appendix I. This poses an additional regulatory impasse to their conservation use.

The USF&WS has had regulatory authority to permit importation of species listed as “endangered” under the Endangered Species Act from the inception of the Act, but has had a practice not to grant such permit applications. The Service’s practice has been contrary to the American conservation experience and directly conflicts with modern sustainable-use principles. It’s been a diplomatic insult to developing nations and has obstructed those countries’ most earnest efforts to use licensed, regulated, limited hunting where it can do the greatest good. In the past, the Service has permitted the import of trophies of “endangered” bontebok taken in South Africa’s programs on the basis they were captive-bred and the hunting activity “enhanced” the survival of the population in the wild. That, in fact, has provided the necessary revenue for game farmers to maintain their bontebok populations, the incentive to positively produce them and a constructive means of husbandry and control.

The US Fish & Wildlife Service (USF&WS) has also permitted the taking of ESA-listed “endangered” exotic

species in Texas when a share of the revenue has been directed back to the species’ country of origin to enhance the species recovery or restoration in the wild. As a practical husbandry and management necessity, surplus animals have to be controlled. Those permitted hunters from the US do indeed provide the primary conservation revenue in India, Laos, Cambodia and other distant countries for endangered spe-



cies such as barasingha, Eld’s Deer and Arabian oryx. Hunting those listed species right here in Texas is funding most of the conservation effort directed toward them. That is another statutory and regulatory success arising from wise use.

At last, the USF&WS has noticed in the Federal Register a proposed change in practice to permit importa-

tion of trophies of game species listed as “endangered” (*Draft Policy for Enhancement of Survival Permits for Foreign Species Listed under the Endangered Species Act*, 68 FR 49512, August 18, 2003). The purpose is to give those game species the advantage they should enjoy as game species but only in very select cases where the range nation has a comprehensive program that is dependent upon trophy hunting and the hunting is a net benefit to the species’ survival or restoration. If fully put into practice, this will allow the American hunting community (both hunters and their conservation organizations) to show once again what sustainable use can do. The very possibility has already been the driving force underlying the conservation advances of species such as the black rhino. Unfortunately, to this date, the Service’s permitting practices have denied foreign game species listed as “endangered” their greatest means and hope of survival.

In summary, hunting and fishing are more than important recreational activities. Hunting and fishing programs have been crafted and designed to propagate game and non-game species. Whether abundant or endangered, smartly crafted programs can serve and save our wildlife around the world.

Briefly Noted

Recent Supporters: The taxing burden of the *Argali Law Suit*, the African Lion listing threat at CITES and dozens of other crisis, has left little time to recognize our donors. In the past three months alone, the following organizations have made particularly significant contributions to Conservation Force: the Chancellor International Wildlife Foundation; the Guides and Outfitters Association of British Columbia; Cabela’s; the Hunting Consortium (Bob Kern’s); Grand Slam/OVIS; the International Professional Hunters Association; and the National Taxidermists Association. They are joined by a hundred other organizations and foundations that have come to know that a contribution to Conservation

Force is one of the single most direct, effective and efficient things you can do to protect our hunting heritage. No hunting advocacy organization has a lower overhead, nor a higher record of success. Conservation Force is in a class by itself.

Permit Application Fees Increase: All USF&WS permit application fees have been increased effective May 11, 2005 (68 FR 18311, April 11, 2005). The fees have not been revised since 1982 and are user fees to offset the cost of permitting services. We advised you in 2003 of the proposal to raise the fees when it was published (68 FR 51222, August 26, 2003). All species listed under CITES, Endangered Species Act and Marine Mammal Protection Act re-

quire permits to import or export. The CITES and ESA import and export permits that most hunters need now cost \$100. They were \$25. Re-issuance is \$50. Re-export permit applications require \$75. CITES Appendix II Export permits for alligators, bobcats and other listed furbearers are \$100. ESA Captive-bred wildlife registration for lawfully maintaining ESA-listed species such as barasingha, Eld’s deer and Arabian oryx is \$200 for issuance and \$100 for renewal. Migratory bird import or export permits are \$75, but taxidermy migratory birds is \$100. Falconry permits are \$100. CITES Certificates of Origin are \$75.00 – *John J. Jackson, III*. One Lakeway Center, Suite 1045, Metairie, LA 70002.