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"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

DATELINE: US

News... News... News
CBD Pushes To Ban All Lead Ammo & Fish Gear

On August 27, 2010 the Environment Protection Agency (EPA) denied a petition filed by the Center for Biological Diversity (CBD) and others calling for a ban on the production and distribution of lead hunting ammunition. EPA sent a letter to the petitioners explaining the rejection – that letter can be found at http://www.epa/gov/oppt/chemtest/pubs/sect21.html.

Steve Owens, EPA assistant administrator for the Office of Chemical Safety and Pollution Prevention, issued the following statement on the agency's decision:

"EPA today denied a petition submitted by several outside groups for the agency to implement a ban on the production and distribution of lead hunting ammunition. EPA reached this decision because the agency does not have the legal authority to regulate this type of product under the Toxic Substances Control Act (TSCA) – nor is the agency seeking such authority.

"This petition, which was submitted to EPA at the beginning of this month, is one of hundreds of petitions submitted to EPA by outside groups each year. This petition was filed under TSCA, which requires the agency

to review and respond within 90 days.

"EPA is taking action on many fronts to address major sources of lead in our society, such as eliminating childhood exposures to lead; however, EPA was not and is not considering taking action on whether the lead content in hunting ammunition poses an undue threat to wildlife.

"As there are no similar jurisdictional issues relating to the agency's authority over fishing sinkers, EPA – as required by law – will continue formally reviewing a second part the petition related to lead fishing sinkers.

"Those wishing to comment specifically on the fishing tackle issue can do so by visiting http://www. regulations .gov. EPA will consider comments that are submitted by September 15."

The Toxic Substances Control Act (TSCA) has a provision that allows petitions by outside groups in which case the EPA must act within 90 days. Luckily, Congress has expressly exempted ammunition. That did not deter the CBD and others that tried to argue their way around the exemption. If successful, it could have banned all shot and bullets containing lead.

The initial petition is entitled *Petition to the Environmental Protection Agency to Ban Lead Shot, Bullets, and Fishing Sinkers under the Toxic Substance Control Act.* It can be viewed on the EPA's website at http://www.abcbirds.org/conservationissues/threats/Final%20TSCA%20lead%20ban%20petition%208-3-10.pdf.

The petitioners are the Center for Biological Diversity, American Bird Conservancy, Association of Avian Veterinarians, Project Gutpile and Public Employees for Environmental Responsibility (PEER). In press releases they claim 40 other organizations have since joined with them. The petition was dated August 3, 2010 and is 100 pages long. It asks the EPA to "ban the manufacture, processing and distribution in commerce of lead shot, bullets and fishing sinkers." It points out that the EPA has already determined that lead is a "toxic substance and has removed nearly all products containing lead from the market." The petitioners point out that the EPA has already banned leaded gasoline, paint, and has recently banned automobile wheel balancing weights that are to be phased out in 2011. It asks for a ban on the "use" of these products as well as their production and distribution. The request to ban lead fishing sinkers includes "jigs" and all "fishing gear containing lead." This includes "lures, sinkers, lead core fishing line, downrigger cannonballs, weights, a variety of fishing traps and nets that employ the use of lead." The final paragraph clarifies that the petition request includes lead in "all…fishing tackle," not just sinkers.

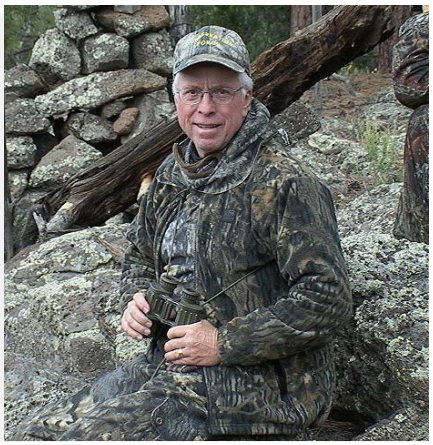
The EPA has only 90 days to act on the petition under the law, which is November 1, 2010, but the comment cut-off is before that in September. Even though the CBD's petition is very persuasive, the EPA's early decision denying that part pertaining to lead ammunition, is jurisdictional. The Toxic Substances Control Act of 1994 has an express exception. Certain substances are excluded from the definition of "chemical substances" that are subject to regulation. Section 2602(B) excludes from regulation any article the sale of which is subject to Section 4181 of the Internal Revenue Code. That code section is the Pittman-Robertson Act excise tax on the manufacture of all firearms and cartridges.

This is a very serious matter for both anglers and hunters! The CBD has since issued a press release claiming that the "EPA claim that it lacks authority to regulate lead ammunition" is contrary to the Congressional intent expressed in the Congressional Record. The petitioners admit that the EPA "is specifically prohibited from regulating ammunition or firearms" under the Toxic Substances Control Act, but (importantly) claims that the exemption does not apply to toxic components of ammunition. Bullets, it claims, are only a component part of a cartridge. It points out that the bullets are not taxed apart from a full cartridge, so the EPA regulatory exemption that rests upon the excise tax is not applicable. The CBD has sent a FOIA request to the EPA requesting all of its decisional information. I would expect the CBD to file suit challenging the ammunition decision in November, if not sooner.

Regarding fishing gear, it is not clear what the greater cost of substitute fishing tackle components would be if lead fishing gear was banned. Perhaps more expensive alternatives would actually increase both hunting and fishing excise taxes, but likewise fewer sportsmen and women will be able to afford to participate. The tax rate is 12 percent.

Briefly Noted

Wood Bison Case Status: The US Fish & Wildlife Service (USF&WS) has answered Conservation Force's second wood bison suit. That is the case challenging the failure to make the required 12-month downlisting finding, the failure to make a five-year review and the lawfulness of the import permit denials. (The first suit was for failing to make a 90-day finding or to process the import applications at all for a decade. The USF&WS has now done both but is opposing legal fees because they did both before the court issued an order to do so.) The USF&WS states in its answer that it is in the process of making the 12-month finding and also that it is now making the required five-



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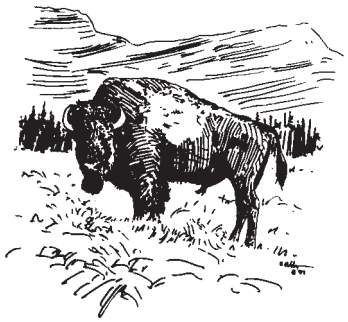
year review of the Canadian wood bison, which is news to us because a five-year review has not even been noticed in the Federal Register. These appear to be small measures of success.

Despite those positive representations, the USF&WS is not expected to complete a 12-month finding in September as it represented it would during the first wood bison suit. We anticipated that failure. Conservation Force's second suit was filed to keep the USF&WS on track.

A case scheduling order has been established by agreement with one contentious exception. Conservation Force and the government disagree on how long the USF&WS should have to produce the Administrative Record of the downlisting petition, the new five-year status review and the permit denials. Conservation Force has asked that the record be completed by October 15th and that if any further delay be encountered the downlisting record be produced separately and first. The Government wants to produce all parts of the record as one and not until November 15th. Since the downlisting 12-month determination is more than two years late, and the current listing is obstructing Canada's conservation strategy, and the record is miniscule, we are trying to press the case forward. Also, if the Government stalls the case enough, it may complete the 12-month finding or the five-year review before the Court renders an order to do it. So, it can again argue no legal fees are due. In that event, the suit will still have served its purpose. The Court will shortly decide the timing for production of the record segments. The case cannot move forward until those records are produced. Nevertheless, if the USF&WS does not make the promised 12-month finding in September, as it had suggested, Conservation Force may file a partial motion for summary judgment on the downlisting claim based upon the face of the pleadings and admissions in the Government's answer. In its answer the Government did admit to all the necessary dates and passage of the non-discretionary deadlines.

Status of Polar Bear Legislation for Import of those Bear Already Taken: The bills in Congress to permit the import of those polar bear that had already been taken before the "effective date" of the threatened listing are making some small progress. The House bill, H.R. 1054, introduced by Representative Don Young of Alaska on 2/12/2009, now has 37 co-sponsors. There should be more. Is your Representative signed on? They are Reps. Michael A. Arcuri (NY), Michele Bachmann (MN), Rob Bishop (UT), Dan Boren (OK), Paul C. Broun (GA), Ken Calvert (CA), John R. Carter (TX), Bill Cassidy (LA), Jason Caffetz (UT), Mike Coffman (CO), Michael K. Conaway (TX), Nathan Deal (GA), John J. Duncan, Jr. (TN), Jeff Flake (AZ), Louie Gohmert (TX), Wally Herger (CA), Ron Kind (WI), Steve King (IA), John Kline (MN), Doug Lamborn (CO),



Cynthia M. Lummis (WY), Donald A. Manzullo (IL), Kenny Marchant (TX), Michael T. McCaul (TX), Tom McClintock (CA), Jeff Miller (FL), Erik Paulsen (MN), Thomas E. Petri (WI), Joseph R. Pitts (PA), Denny Rehbert (MT), Bill Shuster (PA), Michael K. Simpson (ID), Adrian Smith (NE), Harry Teague (NM), Todd Tiahrt (KS), Greg Walden (OR), and Robert J. Wittman (VA).

That bill was assigned to the House Natural Resources Committee, which held subcommittee hearings on its merits. The Senate bill is S.1395, introduced by Senator Mike Crapo of Idaho. It has only gained three co-sponsors: Senator Mike Johann of Nebraska, Senator E. Benjamin also of Nebraska, and Senator James Risch of Idaho. The last major action on it was on July 6, 2009 when it was referred to the Senate Committee on Commerce, Science and Transportation. It obviously needs some life in the Senate. In the meantime, those hunters are paying as much as a $1,000 US per year to store their trophies at taxidermist installations in Canada.

The other remaining possibility is overturning the listing in Federal District Court in the District of Columbia. When those cases are over, perhaps at the first of the year, Conservation Force can still file an appeal challenging the California Court's order that the listing be made "effective immediately" and that overrode the 90-day prior notice mandate Congress has in the ESA. Readers may remember that the 9th Circuit Court of Appeals ruled that an appeal was premature until the listing cases were final. Oral arguments in the various claims challenging the listing have been set by the District of Columbia Court from October through December.

Iran Trophies Not Importable As Cargo Under Iran Transaction Regulations of US, but US Citizen Hunting is Authorized: In December 2009, Conservation Force filed a request for licenses to import hunting trophies from Iran for several individual US hunters. The license request has recently been denied by the Office of Foreign Assets Control Licensing Section on the basis that the import "would be contrary to current US government policy…at this time." Even though trophies can't be imported, the good news is clarification that it is nevertheless lawful for US hunters to hunt in Iran.

This may seem contradictory, but is not. The Iranian Transaction Regulations, 31 CFR 560, "prohibit the importation into the United States any goods or services of Iranian origin or owned or controlled by the Government of Iran," Section 560.201. That

means importation of hunting trophies. It prevents the importation of trophies unless one has a license. The Office has denied this recent license request and earlier applications by Conservation Force have failed before. However, according to the Office, the regulations do "authorize US persons to purchase Iranian-origin goods or services for personal use or consumption in Iran." The Office goes on to explain that "the payment of license and trophy fees, travel to Iran, and payments ordinarily incidental to travel, e.g. the importation of accompanied baggage for personal use, the maintenance within any country including living expenses and acquisition of goods or services for personal use, are exempt from (the) prohibitions" pursuant to Section 560.201(d). In plain language, traveling to Iran and hunting is not a violation of the Presidential embargo.

This clarification has been a long time in coming and is the result of laborious efforts. The actual letter can be found on Conservation Force's website (www.conservationforce.org) in the **News and Alerts** subsection under *Iran: Legality of Hunting by US Citizens under Presidential Embargo.*

There remains the possibility that a traveling hunter can import a trophy for personal use if it is imported by him as "accompanied personal baggage." Accompanied personal baggage appears to be treated differently than items shipped as cargo. Licenses for importation are not necessary for accompanied baggage for personal use. According to other correspondence with OFAC, "[T]he importation of accompanied baggage for personal use would be exempt from the prohibition…." It states this "exemption does not extend to importation of sport-hunted trophies when they are not part of such accompanied baggage for personal use." This suggests no license is necessary except when trophies are shipped as cargo. ITR 560.210(d) and 560.507.

Zambia Elephant Trophies May Now Be Importable: In administrative proceedings initiated by Conservation Force, the International Affairs program of USF&WS has again denied test elephant trophy import permit applications for elephant taken in 2005 and 2006. The recent denial of the request for reconsideration of those permit applications suggest that the USF&WS may now have enough information to grant import permits even though it will not apply the information retroactively. Conservation Force stands ready to assist any hunters with import permit applications for 2010 and 2011 as a free public conservation service.

The sooner permit applications are filed, the sooner we can know if they will be granted.

Following CITES CoP15, Conservation Force gathered and sent all of the positive information produced there on the status of Zambia elephant to the USF&WS in a request for reconsideration of the elephant import permit applications that had already been denied. The Chief of Management Authority said the information was "not relevant to the status of elephant population in Zambia at the time" those hunts were conducted "(2005-2006) or how elephants were being managed by ZAWA at that time." The DMA went on to volunteer, "However, this information may be useful in determining whether elephant sport-hunting conducted in future seasons in Zambia will serve to enhance the survival of the species."

The Panel of Experts endorsed the downlisting of Zambia elephant at CoP15 and the proposal received a majority vote but fell short of the necessary two-thirds majority by only a few votes. The USF&WS itself also voted for that downlisting and made a floor speech in its favor. Had it been downlisted, import permits would no longer have even been required – and that was our intent at CoP15.

Separately, Conservation Force has ongoing litigation challenging the unpublished, arbitrary, irrational and illegal requirements and delays of the Division of Scientific Authority and Division of Management Authority that has delayed imports for five years. That litigation challenges each and every reason permits have been delayed and denied. Win or lose, it should lead to more responsible and business-like processing of permits in the future. It is expected to be in litigation for another year or more. Regardless of the outcome of that litigation, the issues have been identified in the process and should have been resolved during our attempt to downlist the population at CITES. Additionally, both the current Mozambique and Zambia elephant suits are challenging the authority of the USF&WS, International Affairs Program, to make the biological and management assessments it insists upon making. The court may hold that the cause of the delays, as well as the delays themselves, are illegal.

There is only one way to know, which is to file 2010 or 2011 import permit applications. Prospective applicants please call 504-837-1233 or e-mail jjw-no@att.net. - *John J. Jackson, III.*