



“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

BC Bear Report And “Stricter Domestic Measures:” An Analysis Of The Connections

A report has just been issued that is tactfully critical of the European Union’s ban on importations of grizzly bear trophies from British Columbia. It analyzes the European Union’s role in the trophy trade of brown bear, compares the treatment of British Columbia and concludes that the EU is inconsistent and unfair in its treatment of British Columbia.

The report is entitled *Bear Necessities: An Analysis of Brown Bear Management and Trade In Selected Range States and The European Union’s Role in the Trophy Trade*. It is a 2006 TRAFFIC Europe Report contracted by the European Commission in 2004. TRAFFIC is a joint program of WWF and IUCN. TRAFFIC is the foremost wildlife trade monitoring network that is best known for its work in close cooperation with the Secretariat of CITES. The 76-page report is available on the TRAFFIC website at: <http://www.traffic.org/news/Bear.pdf>. The report is much broader and more important than just consideration of British Columbia bear trophy trade. It pro-

vides information into the status and management of all brown bear and insight into the EU’s trophy trade interworkings because of the powerful block vote of 25 countries (soon to be more) at international conventions such as CITES.



The report discloses that the global population of brown bears (grizzly bears) is estimated at around 180,000, of which 58,000 are in North America and the rest in Eurasia. In “almost half of the brown bear’s 49 range states, the populations are thought to be declining and human-induced mortality,

mainly through hunting (in its broadest sense), is one of the main causes of these declines.” (12 are stable or increasing) All are listed on either Appendix I or II of CITES. Canada is the largest exporter of brown bear trophies, followed by the Russian Federation and the US. From 1975 to 2003, the top exporters were Canada (6,010 trophies), Russian Federation (3,615 trophies), US (2,275 trophies) and Romania (1,130 trophies). The US is the largest importer of the trophies, followed by the EU. The US imported 6,459 (46 percent of all trade) and the EU’s 25 member states imported 5,772 (41 percent of all trade) from 1975 to 2003.

In the EU, all Brown Bear populations are listed in Annex A of a European Union Council Regulation adopted in 1997 that implements CITES in the 25 European Union Member States. The wildlife trade Scientific Review Group (SRG) of the EU must advise that the trophy importation would not have a harmful effect on the conservation status of the species or on the relevant extent of its habitat. If

it decides negatively, all EU Member States halt issuance of trophy import permits. This is a “stricter domestic measure” than CITES, as CITES does not require an import permit for Appendix II listed species and only requires a determination that the “purpose” (or use/intent) of the import is not detrimental, not a redundant judgment of the exporting country’s management, quota, and documentation of the species status.

The SRG has made a determination on nine different exporting bear countries - Bulgaria, Croatia, Romania, Estonia, the Russian Federation, Slovakia, Slovenia, British Columbia and the US. Only three have been negative. Given the differences between all the countries “it is very difficult to compare the situation in two countries,” according to the report. Some things are clear when making comparisons. Although the official population estimates of the bear in British Columbia have been criticized, the estimates are based upon the most scientifically advanced methods in use anywhere. The management in British Columbia is also based at the entire population level, (cross-border), not just the country level, as in most countries. Three of the approved countries don’t even have management plans, but British Columbia does. “Compared to other countries reviewed in this report, British Columbia had some of the most detailed information on management and harvest planning. It also responded positively to the majority of the SRG’s requests and conclusions.”

British Columbia holds most of Canada’s brown bears with a minimum population estimate of 13,834 and a “best estimate” of 16,887. Its range “has not changed significantly in the past 30 years” and is at 83 percent of what the environment can support. It has a very sophisticated management strategy and plan for its bears. It limits the harvest of females to 30 percent, which is a relatively arbitrary percentage. It is the only country that takes this extra measure to conserve its brown bears. That limit has been marginally exceeded every year since 1979 but it has been determined not to have af-

ected the population structure. The percentage of the harvest that has been female has varied from 30.6 to a high of 38.9, but has averaged 34.7 percent over the past 25 years. Only a fraction more than one of three bears harvested are female. The ban on imports of brown bears into EU Member States has been quite confusing, so we provide here TRAFFIC’s analysis of the underlying SRG Opinions. It is the best analysis that exists.

SRG Opinions: “The situation of the brown bear in Canada was reviewed in September 1997 (Doc. SRG3/6/3, 1997). In November 1997, the SRG formulated a Positive Opinion for imports of brown bear hunting trophies from Canada, judging that, according to the present state of information, sufficient data were available proving that the conditions of Art. 4(1)ai are met, i.e. *that introduction into the EU would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species* (Doc. SRG4/9/1, 1997). The information provided regarding brown bears in Canada was: a population status of 25,300 (1991), annual kill (legal and illegal) of approximately 3.3 percent of the population, the problem of females being over-represented in the kill has been solved. (Doc. SRG4/9/2, 1997).

“In November 2001, a paper was produced on brown bears in BC summarizing concerns expressed by NGOs and some scientists about the practice and management of hunting in BC, whilst noting this had become a controversial issue. The concerns expressed were related to the methods used to estimate population size, the fact that the sustainable kill rate (set under BC policy) seemed to have been exceeded almost every year and the possibility of kill ‘hotspots’ existing and going undetected (Doc. SRG21/4/5, 2001).

“The paper also noted the recent lifting of the BC moratorium and creation of an independent panel. Based on this paper and the uncertainty over population estimates, the SRG formulated a Negative Opinion for



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imports of brown bear hunting trophies from BC in November 2001.

“In April 2002, following the submission of additional information from the BC Government (B. von Arx, *in litt.*, 2002), including a non-detriment finding for brown bears in BC, the SRG changed its Negative Opinion to a Positive Opinion for hunting trophies from BC. This Positive Opinion was dependent on the results of the Final Report of the GBS Panel (an independent panel of experts appointed by BC in 2001), such that it might be changed back to a Negative Opinion depending on the results.

“In March 2003, the GBS Panel’s report (*Management of Grizzly Bears in British Columbia: A Review by an Independent Scientific Panel*) was released (Peek *et al.*, 2003). The report makes 19 recommendations, aimed at “improving the brown bear management system as currently implemented in BC”. The recommendations are grouped in the following categories:

- A. Estimation of grizzly bear numbers
- B. Risk management in grizzly bear harvests
- C. Administrative process for managing grizzly bears
- D. Habitat issues related to grizzly bears
- E. Research needs regarding grizzly bears

“The GBS Panel’s report did not reveal any compelling evidence of overharvest in the province as a whole or in any GBPUs. However, the GBS Panel could not conclude that overharvest was not occurring (Peek *et al.*, 2003). A working group was then assigned the task of leading the implementation of the GBS Panel’s recommendations, including the revision of the GBPU boundaries and of provincial population estimates and methods (Hamilton *et al.*, 2004). The GBS Panel’s report was criticized in a report by the Environment Investigation Agency, Pro Wildlife and Raincoast Conservation Society, which was provided to the SRG in May 2003 (Doc. SRG26/4/8, 2003).

“In May 2003, the SRG decided to maintain the Positive Opinion on the

hunting trophies of brown bear from BC. The decision was made subject to the provision that the SRG should receive credible evidence of progress with the implementation of the recommendations made by the GBS Panel in time for the 2004 hunting season, i.e. confirmation of the adjustments in the allowable hunt to ensure a reduction of human-caused mortality from six per cent to five per cent and confirmation of the implementation of other hunting-related recommendations, such as changes in administrative unit boundaries. In the absence of such information by 1 December 2003, the Positive Opinion would be reversed (Summary of Conclusions of SRG26, 2003).

“In July 2003, the EU’s Committee on Wildlife Trade (composed of EU Member States’ Management Authori-



ties) discussed the finding of the SRG regarding brown bear trophy trade for BC and drew particular attention to the GBS Panel’s recommendation to create Bear Management Areas as one of the key measures where progress should be made (C. Bail, *in litt.*, 2003).

“In November 2003, the SRG received an update from MWLAP on the progress made to respond to the Panel’s recommendations (J. Murray, *in litt.*, 2003). Murray states that MWLAP will implement the GBS Panel’s recommendations in categories A, B and C (listed above) that “deal directly with the management of grizzly bear harvest beginning with the spring 2004 hunting season”. The recommendations in categories D and E (which includes a recommendation to establish Bear Management Areas) will be pursued through the revision of the provincial

Grizzly Bear Conservation Strategy, which is expected to be completed in 2005 (J. Murray, *in litt.*, 2003).

“In January 2004, the SRG formulated a Negative Opinion for imports of hunting trophies from BC based on lack of sufficient progress in implementing the GBS Panel’s recommendations. For two-thirds of the GBS Panels’ recommendations, the BC Government had only indicated that they intended to implement them but had not yet actually done so (Summary of Conclusions of SRG28, 2004). In February 2005, an import suspension was published in the Official Journal of the European Union for wild hunting trophies from BC (*Community Regulation (EC) No 252/2005* of 14 February 2005).

“In October 2005, the SRG maintained its Negative Opinion for imports of hunting trophies from BC. While the SRG acknowledged that implementation of the management plan and appointment of Grizzly Bear Management Areas is a long-term issue, the EC decided to ask BC for a clearer timeframe and to seek further information from the independent Panel (Summary of Conclusions of SRG34, 2005).”

The report concludes that “BC’s Negative Opinion was maintained in January 2004 because the SRG thought that BC had not shown enough progress in implementing the management recommendations of the Grizzly Bear Scientific Panel.” The ultimate irony is that BC is being denied imports because its plan is so much more detailed and ambitious than anyone else’s. To quote the report, “In some cases, countries that provide detailed information may find themselves undergoing further scrutiny of population monitoring techniques or level of implementation whereas countries with no management plan and with little information available about population status and management are given a Positive Opinion.” BC bear imports continue to be denied, despite the fact that the EU’s Scientific Review Group “considered that the overall management in BC is very good” and despite the fact it is better than most

other exporting countries. It suggests that the scientific review process has been heavily influenced by a few anti-hunting NGOs.

Stricter Domestic Measures

The EU Regulations that have impeded the trade of BC grizzly bear trophies are measures that go beyond CITES. In CITES jargon, they are “stricter domestic measures.” Parties have the right to adopt “stricter domestic measures,” just as they are free to regulate species that are not even listed, but such measures have long played havoc on trade and conservation programs that rely upon that trade.

Such measures add another level of subjective, remote, politically influenced impediments to trade. The USF&WS is renowned for bureaucratically imposing such measures on developing nations’ trophy imports. In fact, it has long been considered the worse offender. It was such a measure that led to the Elephant Law Suit, *SCI, et al. v. Babbitt, et al* in the early 90’s. Now, more than a decade later, the International Affairs section of the USF&WS is about to adopt permanent internal regulations expressly giving themselves greater authority and obligation to judgmentally review and reject imports of hunting trophies. We (yours truly was the lead trial counsel) won the Elephant case in what the Judge described as an “uncommon total victory,” but the hunting community is about to lose the war. Before CITES COP 9, the African range states met in Kasani and seriously protested the USF&WS’s stricter domestic measures that were preventing the US importation of elephant hunting trophies. At COP 9, Africans and other exporting nations criticized the US for its import restrictions. Secretary Bruce Babbitt of the Department of Interior apologized to all that the US had been accused of unjustifiably impeding trophy trade but promised to facilitate it in the future. That is a long forgotten speech, as the USF&WS treats trophy import permitting as a “low priority” and does little to cooperate with permit applicants or exporting countries. This is the same USF&WS that put a top HSUS official in charge of permit-

ting, then in charge of the Office of Scientific Authority.

International hunting is in serious peril if the USF&WS codifies its stricter-measure authority into permanent, legally binding regulations. The proposed regulations authorize the USF&WS to disregard trophy hunting quotas set by CITES and to ignore the Resolutions of CITES that explicitly provide that importing countries



should accept exporting countries non-detriment determinations. The regulations expand the right of review to include all Appendix II species. The new proposed regulations defy every hunting related Resolution adopted by CITES in a quest for more control. It gives the USF&WS power and authority to deny permits, despite the Service’s history of abuse and past diplomatic protests of foreign countries

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about the Service’s practices. If anything, it is time to make our Government more responsible and hold it accountable, not a time to give it more authority, that it has a long history of abusing.

Despite authority for stricter domestic measures, the Parties to CITES and even the *Convention of Biodiversity* have expressed concern about the negative impact on trade and wildlife conservation due to the use of such measures. Resolution 6.7 of CITES recommended that “each Party intending to take stricter domestic measures...make every reasonable effort to notify the range states of the species concerned at as early a stage as possible prior to the adoption of such measures, and consult with those range states that express a wish to confer on the matter.”

It does not mean “do it to them,” it means “work with them”.

Principle 12 of the *Rio Declaration on Environment and Development* states that: “Trade policy measures for environment purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.”

Now the CITES Secretariat is seeking agreement on a discussion document for the 14th Conference of the Parties in Amsterdam in June 2007. It is being discussed at the 54th Meeting of the Standing Committee, 2-6 in Geneva. It is our hope that the Parties will devise a recommendation that will make importing countries more responsible and hold them accountable for the closure of markets that could and would benefit conservation. Disproportionate, unnecessary and redundant regulations can destroy the “goose that lays the golden eggs.” Tourist hunting is an excellent conservation tool but it is dependent upon reasonable trophy trade. At a time that incentive-driven conservation is becoming more widely accepted, disincentives to trade should be the exception, not the growing norm. – *John J. Jackson, III.*