



U.S. IMPORT REQUIREMENTS

ARGALI, MARKHOR, AND URIAL FROM TAJIKISTAN

The U.S. Endangered Species Act (“ESA”) was enacted in 1973 to protect habitats, provide recovery programs for at-risk species, and implement wildlife-related treaties and conventions including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). 16 U.S.C. § 1531(b).

The U.S. Fish and Wildlife Service (the “FWS”) is the U.S. federal agency charged with implementing the ESA and CITES. It publishes regulations to govern how permits are issued under these laws and to provide guidance on how ESA and CITES standards are to be interpreted. According to the FWS Chief of Permits: “When the U.S. Congress and President Nixon enacted the ESA in 1973, they established an expectation that U.S. residents/citizens would not contribute to the extinction of a listed species through activities that might adversely affect the species.” To avoid negative impacts on species at risk of extinction, or at risk of extinction in the “foreseeable future,” the ESA provides for the “listing” of species as either “endangered” or “threatened.” § 1533.

For species listed as endangered, the ESA prohibits import into the U.S., unless a permit is issued by the FWS. § 1538(a)(1). An import permit issues when the import and underlying activity will “enhance the propagation or survival of the affected species.” § 1539(a)(1)(A). The FWS defines “enhancement” as providing long-term benefits to the species in the wild, such as habitat restoration, threat mitigation, and human-wildlife conflict reduction. The FWS has indicated that the IUCN “Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Aug. 2012)” are consistent with the criteria the FWS considers in finding enhancement. The Guiding Principles identify a number of factors of a well-managed hunting program: being sustainably and adaptively managed, generating conservation benefits and socio-economic or cultural benefits, being transparently governed, and distributing revenues to support conservation and community beneficiaries.

The FWS also evaluates the role of U.S. hunters, and whether their involvement or financial contributions are benefiting the species. According to the Chief of Permits, the FWS considers: “How do we make sure that our citizens are not adversely affecting the management of the species ... that they’re supporting it ... that money is going back to the conservation of the species? How does a U.S. hunter’s participation in the hunting program contribute to the overall management of the species, and can this be documented?”

The ESA allows the FWS to adopt “necessary and advisable” regulations to protect and recover threatened-listed species. § 1533(d). FWS regulations impose the same enhancement requirement on threatened-listed species, with two exceptions. First, the FWS may issue a “special rule” governing imports of a species and creating a different set of requirements. Second, the “9(c)(2) presumption” applies when a species is only listed on Appendix II of CITES and is not listed as endangered. In that case (in the absence of a special rule), the import of a hunting trophy in accordance with CITES is “presumed” to be lawful under the ESA. § 1538(c)(2).

Under CITES, before allowing import of an Appendix I-listed species, the FWS Division of Scientific Authority (the “DSA”) must find the import “will be for purposes which are not detrimental to the survival of the species involved.” CITES art. III(3) (a). An FWS regulation describes the factors the DSA

considers in making a non-detriment finding. These include, among others, whether: the hunting is sustainable and “part of a biologically based sustainable-use management plan”; the hunting would “not contribute to the over-utilization of the species”; the hunting “would pose no net harm” to the species; and the hunting would not lead to long-term decline, habitat or range loss, or increased risk of extinction (including from increased international trade) for the species. 50 C.F.R. § 23.61.

For hunting trophies specifically, the FWS focuses on the population size, trends, and distribution of the species; hunting management including science-based quotas and regulations on season, areas, sex, or age for offtakes; the “effectiveness of the implementation of CITES by the range country,” including its legislation; and whether the hunting provides benefits to the conservation of the species. S. Lieberman, *Procedures Used by the United States of America in making CITES Non-Detriment Findings* (2002).

The FWS publishes regulations to govern how permits are issued in general (Part 13), under the ESA (Part 17), and under CITES (Part 23). An applicant need only submit one permit application if the species is listed under both the ESA and CITES. 50 C.F.R. § 13.1. The FWS has posted permit application forms on its website (<https://www.fws.gov/permits/ApplicationMain.html>).

Argali from Tajikistan

Most argali (*ovis ammon*), including Marco Polo argali (*ovis ammon poli*), are listed on CITES Appendix II.

Argali are “split-listed” under the ESA. Most populations are endangered; however, the populations of Kyrgyzstan, Mongolia, and Tajikistan are listed as threatened. Normally, the 9(c)(2) presumption would apply (no import permit would be required). But the FWS has published a special rule for argali trophies from these three countries. Under this rule, an enhancement permit is required for import of an argali trophy from Kyrgyzstan, Mongolia, or Tajikistan. In addition, the hunting license must accompany the trophy to show the trophy was hunted in line with the country’s annual argali quota, and within 30 days of import, the hunter must submit a report about the hunt. The FWS has posted a permit application for argali trophies on its website (Form 3-200-21).

The special rule also establishes conditions to allow Kyrgyzstan, Mongolia, or Tajikistan to “certify” their argali management and hunting programs. The FWS could authorize imports of argali trophies without requiring an import permit if the following conditions were met:

- (i) The country’s argali population is “sufficiently large to sustain sport hunting”;
- (ii) The wildlife authority has “capacity to obtain sound data” on the argali population;
- (iii) The wildlife authority “recognizes” the argali “as a valuable resource” and has “legal and practical capacity to manage them as such”;
- (iv) The argali’s habitat is secure;
- (v) The wildlife authority “can ensure” that hunting trophies have been legally taken from the “specified populations” (i.e., the large, well-managed ones that have secure habitat); and
- (vi) Funds from the hunting “are applied primarily to argali conservation.”

50 C.F.R. § 17.40(j). To date, these conditions have not been met. The FWS has issued permit applications on a case-by-case basis, subject to annual review of the underlying management and hunting programs and annual enhancement findings for each of these three countries.

Markhor from Tajikistan

All markhor are listed on CITES Appendix I. Some subspecies of markhor are listed under the ESA, but Heptner's (Bukharan) markhor (*capra falconeri heptneri*) are not listed. Therefore, to import a trophy into the U.S., the import requirements for a CITES Appendix I species must be satisfied. The FWS has posted a general permit application for CITES Appendix I and/or ESA on its website (Form 3-200-20). For a CITES Appendix I species that is not ESA listed, Question 5, regarding enhancement, should not apply.

In November 2015 and August 2016, the DSA made positive non-detriment findings allowing the import of four markhor trophies from Tajikistan. In these findings, the DSA concluded, among other things, that Tajikistan's markhor management program is kept within conservative offtake limits (e.g., less than 0.5% of the population), and appears to support markhor population growth and habitat security. The DSA noted that "substantial financial resources are now available [through hunting] for markhor conservation activities," and conservation incentives for local communities were generated by the hunting program. DSA, *Record of Advice on Permit Application* (Nov. 20, 2015 and Aug. 23, 2016).

Urial from Tajikistan

Bukharan urial (*ovis vignei bocharensis*) are listed on CITES Appendix II. They are not ESA-listed. Because they fall under the 9(c)(2) presumption, Bukharan urial should be importable with a CITES export permit from Tajikistan and without needing any CITES import permit or ESA import permit (so long as all the CITES conditions are met).¹

SUMMARY OF U.S. REQUIREMENTS

Common Name	Scientific Name	ESA Listing Status	CITES Listing Status	Import Requirements (Form)
Argali	<i>Ovis ammon</i>	Threatened	Appendix II	CITES Export Permit from Tajikistan ESA/CITES Import Permit from FWS (3-200-21)
Bukharan Markhor	<i>Capra falconeri heptneri</i>	Unlisted	Appendix I	CITES Export Permit from Tajikistan CITES Import Permit from FWS (3-200-20)
Bukharan Urial	<i>Ovis vignei bocharensis</i>	Unlisted	Appendix II	CITES Export Permit from Tajikistan No U.S. Import Permit

Attachments:

1. Relevant ESA Excerpts (16 U.S.C. §§ 1531, 1533, 1538, 1539)
2. Relevant ESA and CITES Regulations (50 C.F.R. §§ 17.40(j), 23.61)

¹ As long as the urial are considered Bukharan, they may be importable. We note that "shapo" (*ovis vignei vignei*) are listed as CITES Appendix I and endangered, and may need to be distinguished. See S. Michel et al., *Distribution Areas, Population Status, and Prospects for Conservation Management of Urial Sheep Ovis Vignei in the Wakhan Valley of Afghanistan* (Sept. 2009).

3. FWS Permit Forms 3-200-20 and 3-200-21
4. IUCN/SSC, Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Aug. 2012)
5. T. Van Norman, FWS Chief of Permits, Presentation, Endangered Species Act: Enhancement (Sept. 2016)
6. S. Lieberman, Procedures Used by the United States of America in making CITES Non-Detriment Findings (2002)
7. DSA, Record of Advice on Permit Application (Nov. 20, 2015)