



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 September 2016

The Leopard in the Limelight

On July 25, 2016, a group of antis filed a petition to up-list all African leopard as Endangered under the ESA. This move was just preceded by the Cat Specialist Group of IUCN raising the leopard to VULNERABLE on its Red List. The Cat Specialist Group of IUCN has also drafted a soon-to-be-released Worldwide Action Plan for all leopard. And the 28-member EU has introduced a Resolution for the CITES conference in late September (CoP 17) to restrict leopard trophy trade.

There are nine recognized subspecies of leopard. The subspecies in Africa is the *Panthera pardus pardus*. Those in Southern and Eastern Africa are doing the best and are generally considered "healthy" even though presumed to be in decline in some areas. Those are Threatened under the ESA and the ones petitioned for up-listing to Endangered. It is the status of leopard in the rest of the world that has caused the new IUCN VULNERABLE reclassification. Nevertheless, the IUCN Red List authors speculate that prey animals are down in Southern and Eastern Africa, thus the leopard are down by the same percentage. They conclude the leopard in Southern Africa are thus "potentially" VULNERABLE. We do not think that is close to accurate and are quite concerned with that kind of faulty reasoning and untethered inference. Leopard eat smaller mammals, birds, snakes, insects, mice and more. They are the keenest hunters of all predator mammals. The speculation that leopard have declined at the same percentage rate as large ungulate prey appears to be an extreme application of the precautionary approach contrary to the hunting skills and diversity of diet of

DATELINE:

Africa



John J. Jackson, III

the leopard. Regardless, the IUCN authors do not view Southern and Eastern leopard as ENDANGERED under the Red List criteria as the antis have petitioned under the ESA.

The petition to reclassify the ESA Threatened-listed leopard as Endangered was filed by five animal rights/animal welfare organizations: the Humane Society of the United States (HSUS), the Humane Society International (HSI), the

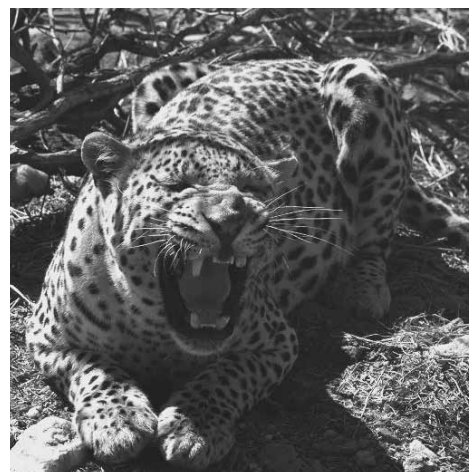
Center for Biological Diversity, the International Fund For Animal Welfare (IFAW), and Fund for Animals (FfA). The HSUS, HSI, and FfA are affiliated. The 95-page petition contains too many allegations to repeat but high points follow.

The petition is more than an attempt to reclassify the leopard as endangered in order to stop trophy imports. It is also a petition to immediately "suspend" the import of all leopard trophies and/or to make import far more difficult. The petitioners "petition the Service to take immediate action to restrict imports of African leopard, by (1) suspending the issuance of CITES import permits for *Panthera pardus* trophies until the FWS non-detriment advise memorandum is reevaluated for each range country where trophy hunting occurs; and (2) rescinding the special rule pertaining to leopards from 'south Africa'...." because it does not require proof of enhancement. The petition also calls for an immediate five-year review alleged to never have been performed. So, I presume the FWS will initiate a five-year review simultaneously with the 90-day reclassification review.

In detail, the petition claims that the leopard should not have been down-listed to Threatened in 1982. It alleges

that the 1982 split listing of the leopard (most from Eastern and Southern Africa reclassified as Threatened while others remain Endangered) is illegal today because there is no evidence in the 1982 administrative record that today's "distinct population segment" analysis was performed at the time of the reclassification and a five-year review should include such an analysis and be applied retroactively. It claims many populations are in decline but provides too little evidence of what that decline is or proof it warrants an Endangered rather than Threatened listing, if that. It identifies some populations that research has shown are below full potential carrying capacity before experimental reforms were instituted, but that is not to say an increase of leopard populations is necessarily desirable or in the best interest of the

Leopards are the next hunting species targeted by animal rightists.



leopard in the long run considering limits of human tolerance, or that failure to maintain the leopard population at any particular or maximum potential number endangers it.

The petition is supported by two sworn declarations of "opinion" by celebrated Dr. Jane Goodall and the renowned videographer of National Geographic, Derek Joubert. Neither

are experts on leopard status qualified to give an expert opinion, but both are against trophy hunting of any kind. Dr. Goodall states, "Trophy hunters target large males in their prime... splendid individuals whose decapitated heads disfigure the walls of countless wealthy homes," and "In my opinion, leopards across their African Range are in Danger of Extinction..." Dr. Goodall lists that she has been a Board member of HSUS since 1989 and Honorary Board Member of IFAW since 2014, and has won awards from both. She cites no firsthand knowledge of the status of leopard in the relevant countries, just her unsupported "expert" opinion against hunting. Joubert cites a few anecdotal experiences without documentation but no firsthand knowledge of the status of leopard range wide. He claims, "Trophy hunting is little more than a bloodlust and thrill of killing and has no longer any place in sound wildlife management..." He clearly demonstrates his bias against hunting and gives an opinion that leopard must be endangered and listed as endangered to stop trophy imports that he despises.

All African leopard are on Appendix I of CITES but the Parties of CITES as a body have approved quotas for trophy trade for most of Southern and Eastern Africa based upon duly debated information. The USFWS has the practice of making its own biological determination before issuing an import permit rather than relying upon the biological determination made by the exporting countries or the quota set by the Parties at a CoP. Now the European Union and its Member States have proposed a resolution to raise the bar for leopard. Annex 1 and 3 of CoP 17 Doc. 39.1 propose the passage of a Resolution and Decisions for the Animals Committee to review all hunting trophy quotas set by the Parties, particularly "for leopard hunting trophies and hunting trophies of other Appendix I species." The Parties are invited to participate in the Animals Committee, and it is suggested that the Animals Committee do this review on a regular basis. The findings and recommendations of the Animals Committee are to be reported to the Standing Committee, which in turn is to make its own recommendations to the Parties at 18th CoP.

The document submitted states, "This Resolution should in particular set out a number of conditions (to ensure that the exports are sustainable) that should be met before such imports can be authorized." Res. 39.1, paragraph 12. Apparently this overrides the quota set by the Parties and the Animals Committee would add conditions that would have to be satisfied before a country could use its quota. (See below about the new seven-year age approach).

The EU wants to develop "additional species-specific guidance on measures to achieve non-detriment." Res. 39.1, paragraph 15. In Annex 1 the EU goes so far as to recommend the making of an enhancement rather than just a non-detriment finding: "RECOMMENDS that trophy hunting activities relating to species listed in Appendix I should produce tangible conservation benefits for the species concerned." This is an about-face that would in effect reverse the revisions to Res. 2.11 adopted at CoP 9 in 1994 that deleted reference to proof of enhancement and recommended acceptance of the biological determinations made by the exporting country. The EU Resolution would only apply to hunting trophies, which demonstrates Cecil sensitivity. It also is far too similar to the EU Written Declaration to restrict hunting trophies that failed to get the required signatures to carry in the European Parliament and lapsed on April 18, 2016. In fact, this is more than a mere Declaration, this is to be a regulation – one like Born Free and Lion-Aid promised to be imposed on the whole world, not just the EU.

Though not entirely successful within the EU, the antis have succeeded in having the EU propose added restrictions and proof of enhancement for leopard and all other hunting trophies listed under both CITES Appendix I and II.

The IUCN Cat Specialist Group has drafted but not yet released a Worldwide Action Plan for leopard. It is to be the framework for their Global Leopard Conservation Initiative. The CSG takes credit for leading the Initiative but acknowledges heavy participation of the Panthera organization from inception. Recently Panthera has begun circulating a new seven-year minimum age approach for both lion and leopard



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without buy-in from the hunting community or government wildlife department authorities. We presume the new framework for the conservation of the leopard will include Panthera's

seven-year age minimum and that the "experts" and antis will want to add it as a condition of leopard trophy trade to be set by the Animals Committee, Doc. 39.1, CoP 17. Despite requests for

a copy of the draft Worldwide Leopard Action Plan, it is not ready and not being released early in draft until complete. We know of no hunting interest participating in its preparation. ■

I am often asked, "Why do you hunt?" Sometimes

Why Do We Hunt?

it is an innocent question in social conversation. At times it has been a media question by someone that does not know enough about hunting to ask anything else. At other times there is a sinister suggestion behind the question – a suggestion that hunters' motivation is questionable or objectionable.

I have spent considerable time over the years trying to help hunters answer the question. Conservation Force has two web sections on Why We Hunt. The page is entitled the Role and Value of Hunting. It is divided between the role regulated hunting plays as a service to society in furthering conservation (ecological services it provides that make it relevant today) and separately, what the hunting experience means to those that do it and what makes it so important to hunters: www.conservationforce.org/#!/role-of-hunting/e7nao

Both sections are enjoyable reading. Believe me, the section on the benefits of hunting are something to crow about. As Gray Thornton, President of the Wild Sheep Foundation states, "Conservation is what we do: conservation is what we are." The section on what it means in human terms to those that do it captures some of the higher order experiences arising from the hunting engagement and relationship with the natural world and game we hold so dear. Hunting is a higher order experience that is beyond easy explanation. Aldo Leopold, the "Father of Wildlife Management" and author of *The Sand County Almanac* and the "land Ethic" of modern ecology put it very succinctly: "I suppose it is impossible to explain this to those that do not know it." Leopold 1946.

In August Conservation Force participated in the Crucial to Conservation Workshop in Atlanta. The Workshop was organized by SCI and sponsored by the SCI Foundation's Hunter Legacy Fund, RMEF, DSC,

WSF, SCI, and Conservation Force. It was an important workshop that you will be hearing more about. One of the more than dozen expert speakers was attorney Michael Sabbeth. He took a different view of the question, "Why do you hunt?" To paraphrase him, how do they judgmentally question why one hunts in disregard of the enormous benefits to human beings, wildlife, habitat, conservation infrastructure, law enforcement... How dare they! I asked him to write me a paragraph to capture his suggested response. It follows:

Motivation, Trophy Hunting, Defense, and Offense

Hunters get judged on their motivations. That was a key message that came through loud and clear at the Crucial to Conservation Workshop concluded August 4 in Atlanta, Georgia. Like a Zombie from the grave, the question arises: is it unfair, illogical, indeed, unethical, to judge hunters by their motivation? I show why the answer to that question is "yes." That hunters' motivations are useful factors in judging hunters does have a superficial logic, but the logic is illusory. Even a cursory analysis of this basis for judging hunters is drenched in irrationality, bias and, dare I write this, in abject stupidity. To make such a judgment, even if the judgment were relevant, the person making the judgment must know the hunter's motivation. Hunters hunt for many and complex reasons; thus their motivation is layered and nuanced. The reality is that the person doing the judging has no insight into the hunter's mind and, significantly, makes no effort to discern the hunter's motivations.

Regarding the hunter's motivation, it is proper to ask some questions, such as: Why does motivation matter?



The Crucial to Conservation Workshop was sponsored by several leading hunting conservation organizations.

and Does motivation affect a hunt's outcome? Motivation may be relevant, I concede, in prosecuting a crime, but motivation is irrelevant for making a moral and rational judgment of hunters or of hunting. I find no ethical principle that justifies using motivation to determine the morality and legitimacy of the hunter's actions.

Much discussion at the Conference addressed trophy hunting. We concluded that the phrase, "trophy hunting," was so vague as to be morally and factually meaningless. However, the meaningfulness of the phrase was a favorable feature, not a bug, for the anti-hunter. Lacking precision in meaning, it could mean anything the anti-hunter wanted it to mean. The attacker never has to define its terms. The vagueness of "trophy hunter" allows it to be a slur that unceasingly puts hunters on the defensive.

So what can hunters and hunting advocates do with words such as motivation and "trophy hunter?" To me, the answer is unambiguous: focus on the consequences of hunting and show that concern with the motivation of hunters is misplaced and morally irrelevant. Ponder this situation: a hunter intends to get a significant representative of an animal species to put on his or her wall, (a trophy) but will donate the meat to the needy and the hunting fees will provide food, clean water and reduce poaching. Which group, then—the hunter or the person attacking hunting based on motivation—is the more morally praiseworthy? The answer is obvious. Let us, thus, turn the tables on those who are so judgmental of hunters' motivations and judge their motivation. The result will not be favorable to those who attack hunters. ■

VICTORY in New Jersey Suit to Void Anti-Trophy Law

On June 1, the State of New Jersey enacted a law that banned the possession, import, export, transport, and processing of certain species, including African elephant, leopard, lion and rhino hunting trophies. There are published Cecil Campaign plans to enact similar bans in 22 states before 2020. We knew it had to be stopped as soon as possible.

On July 8, Conservation Force, individual hunters, and taxidermists sued the State to have the law declared void under the Endangered Species Act (ESA). The suit was filed in federal court in New Jersey. The plaintiffs sought a preliminary injunction against enforcement of the trophy ban. The plaintiffs alleged two claims: (1) the New Jersey law is void under the ESA, which does not allow states to “prohibit what is authorized” by the ESA or US Fish & Wildlife Service (FWS) regulations, and (2) the New Jersey law deprives plaintiff hunters and taxidermists of a federally protected right or privilege (i.e., permission to import legal trophies).

A few days after the suit was filed, the court ordered the parties to focus on the plaintiffs’ first claim. On August 1, the State opposed the plaintiffs’ claim and on August 8, the plaintiffs filed a reply to this opposition. The fast-track case issues were fully briefed for the court’s decision.

The plaintiffs argued that the ESA’s plain language preempts (voids) the state law, because there is no exception for federally authorized or permitted imports, exports or possession. And New Jersey actually agreed. On the

very first page of the State’s opposition, it conceded: “*the State recognizes that it would be preempted from enforcing the Act against a person or entity for activities which are explicitly authorized by a permit or exemption granted under the ESA or its regulations.*” On several additional pages, New Jersey represented it would not enforce the statute against persons with federal permits or ESA exemptions. Of course, one cannot import any of the trophies without a federal import permit.

New Jersey then raised several technical arguments. First, based on its concession that the law would not be enforced against federally authorized activities, the case was not “ripe” because the plaintiffs’ issue had essentially been resolved. And second, because some of the New Jersey law’s prohibitions do not conflict with the ESA, such as the prohibition on import and possession of an illegal animal trophy, the law cannot be preempted entirely.

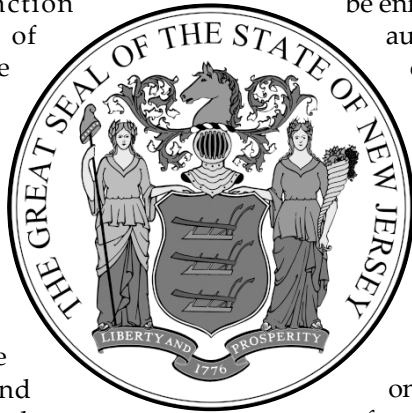
The plaintiffs responded to these arguments by distinguishing the cases upon which the State relied. The plaintiffs pointed out significant factual and legal differences that lead to a different outcome with respect to enforcement of this New Jersey law.

The plaintiffs then responded to the “ripeness” argument by demonstrating that “trophy hunters” were the public targets of the law’s sponsors, submitting a collection of articles and social media posts evidencing the law’s intent. The plaintiffs noted that, until the case was filed and the issue brought before the court, New Jersey had not adopted a

narrower version of the law’s broad trophy ban. The self-serving statement that the State would now comply with the ESA could not defeat the plaintiffs’ legitimate claim.

The plaintiffs responded to the second argument by emphasizing the breadth of the law and the lack of any exception for federally authorized activities. The law cannot be saved because it covers both legal and illegal conduct; that it covers both means it conflicts with the ESA’s intent to void state laws that overreach into federal regulation of listed species.

As of this writing, the court has ordered preparation of an order granting judgment to the plaintiffs on their first claim, because the state has conceded it will not enforce the ban against federally permitted trophies. The plaintiffs and the State are negotiating the wording of the order. We will keep you posted on the status of the case, but the bottom line is good news for New Jersey resident hunters and businesses. New Jersey’s ban on import, export, transport, possession, and processing of elephant, leopard, lion and rhino parts *will not be enforced against federally authorized or permitted trophies*. And Conservation Force will continue to monitor the State’s compliance and the progress of similar (and similarly illegal) laws in other states. The antis’ Cecil Campaign to legislate trophy import bans in 22 states has been stopped at the doorstep. New Jersey is no longer the model intended for other states, and state legislators have been put on notice that the hunting community will not stand for these illegal laws. This makes four successful suits and interventions in federal courts by Conservation Force in the past 11 months. In a fifth case, the suit against Delta was dismissed. We have appealed that dismissal. ■



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