

CALIFORNIA ASSEMBLY PASSES SB 1487, ICONIC AFRICAN SPECIES PROTECTION ACT

In the last hours of the last day of session the California State Assembly passed SB 1487 by a vote of 55 to 20. The bill contains important exceptions and exemptions (explained below), but in principle prohibits the possession (including import) of 11 African game species defined to be "iconic." What the state could pass was constrained by federal laws governing foreign species but the whole tenor



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of the bill derogatorily reflects on big game hunting, particularly big game hunting of foreign game, the FWS, and the African range countries with the best and most successful conservation programs.

The species covered are called "iconic members" of "the animal kingdom" and the SYNOPSIS of the Assembly Judiciary Committee said "(t)his bill ... seeks to continue California's historic tradition of being a world leader in protecting animals rights and endangered animal populations. In that tradition, this bill would prohibit the possession in California of sport-hunted trophies..." The species covered are African elephant (*Loxodonta africana* and *Loxodonta cyclotis*), African lion (*Panthera leo*), leopard (*Panthera pardus*), black rhinoceros (*Diceros bicornis*), white rhinoceros (*Ceratotherium somum*), giraffe (*Giraffa camelopardalis*), Jentink's duiker (*Cephalophus jentinki*), plains zebra (*Equus quagga*), mountain zebra (*Equus zebra*), hippopotamus (*Hippopotamus amphibious*), and striped hyena (*Hyaena hyaena*).

Several provisions are of special note. To provide a "safe harbor" for trophies in interstate commerce (avoid litigation over interstate commerce), there is a one time

right of possession/passage for up to 180 days. This was increased from 30 days. There is also a "grandfather clause" for trophies imported before January 1, 2019 for noncommercial purposes. There is an exemption for accredited educational or scientific Institutions. There is also an exemption for federally permitted trophies (see below). The bill is both criminal and civil. It provides misdemeanor

criminal penalties as Section 2351 of the Fish and Game Code and adds enforcement by civil suit by specified local attorneys for trophy forfeiture and fines.

Conservation Force has been monitoring all states for similar legislation since the *Cecil Campaign* was begun by anti-hunting organizations and our rapid defeat of the New Jersey legislation that was going to prohibit import and possession of the Big Five. Though the California bill is disconnected from the *Cecil Campaign* (initially introduced by a small unknown and misinformed local animal rights organization) it could have the same negative consequences and reflects derogatorily on the reputation of the hunting community.

In California we tracked the bill from inception and sent notice of its illegality shortly after introduction hoping that would be enough to discourage its progress, as it has in other states. Not in California. When we learned of its passage in the California Senate we became alarmed and stepped up our opposition with an unprecedented information campaign with the Assembly committees and the full Assembly when it reached that stage over a period of

several months. Certainly, we thought, California would recognize the federal district court order in New Jersey. One irony is we cited California federal court jurisprudence to the court in the New Jersey case that explicitly held state legislation could not conflict with federal regulation of foreign species import and possession.

The purpose of our participation went far beyond informing the Assembly members of the New Jersey case enforcing the ESA prohibition against actions in conflict with FWS permits and regulatory activities. Our physical presence for nearly a week in Sacramento was also hard to ignore. At every step we were gathering evidence for litigation should it prove necessary. We also cycled genuine expert, peer reviewed articles, studies and reports on the status of the key species, habitat, prey base, community benefits, anti-poaching, management budget revenue and more to every committee member of all the committees. When the bill reached the full Assembly each morning we faxed a cover letter and indisputable, peer-reviewed education material to all 80 Members of the Assembly with storytelling photographs. We tried to educate the members for this bill and for the future. In ten consecutive days including the last day of the session, we faxed cover letters, attachments and telling photographs to all 80 members of the Assembly. It was a useful exercise, and the bill gave us the necessary platform. Maybe some of the enlightenment will stick.

There is no doubt that the key Assembly members and NGO proponents of the bill claim the purpose of the bill is to discourage trophy hunting. To the end they continued to broadcast that the bill does in fact prohibit imports and possession even though, as amended to be within federal law, the most

important of the eleven enumerated species are exempted from the alleged "protection." The passage of the anti-hunting/animal rights message will no doubt be broadcasted to other states and cause fires in those states. We are closely monitoring other states to refute the false representations as early as possible.

We were able to organize four African countries and two renown community programs to rather quickly send letters in opposition to the bill during the various Assembly committee hearings. That is an unprecedented achievement in itself.

We largely succeeded when the Assembly's Water, Parks and Wildlife Committee added a clause exempting import or possession of wildlife parts "expressly authorized by the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) or its implementing regulations." Plain and simple, this was acknowledgment of Conservation Force's New Jersey case. I was the Lead Witness at that committee hearing, but all opponents to the bill had been citing our New Jersey case order that such bills are illegal. The final version that passed the full Assembly has that FWS exemption. Hopefully, the import and possession of CITES as well as ESA listed species are exempted from restrictions because CITES is given effect and implemented by the ESA and ESA implementing regulations of the FWS.

One thing is certain, Africa's four leading conservation countries, though never consulted by California, fiercely defended trophy/safari hunting as an indispensable tool for wildlife conservation when given the late alert by Conservation Force. On June 26, 2018 the Director General of the Tanzania Wildlife Management Authority, Imani R. Nkuwi, wrote the relevant committee at that point that "tourism hunting" was the main use of 304,000 square km of Tanzania.

"The biodiversity in these vast areas whose land use is primarily tourism hunting is conserved through the revenues generated by a very limited and sustainable offtake of wildlife huntable species. This very limited and biological terms negligible

offtake allows my agency to perform crucial conservation activities such as anti-poaching, general wildlife conservation through sustainable management and community development. As such TAWA is using tourism hunting as a way to counteract the negative effect of growing human population and reduce human wildlife conflict and destructive land use as uncontrolled grazing and agriculture. Should any importing country or state halt import of hunting trophies, the consequences on biodiversity will have no resources to safeguard wildlife and its habitat as this land will be transformed to other competitive forms of land use."

He also pointed out the importance to community welfare and game range in community areas: "Furthermore, tourism hunting is providing direct and tangible benefit to our poor and marginalized rural community." He cited that Tanzania has WMAs and has recently revised and increased community revenue sharing. "Without regulated hunting and the attached revenue, these rural communities will turn a blind eye to poaching as a way to sustain their livelihood." He concluded that "regulated and legal hunting is one of the most powerful tools to achieve biodiversity conservation and livelihood improvement in many parts of rural Africa and Tanzania is no exception."

The Judiciary Committee noted twice that Tanzania's opposition was "very late" and did not acknowledge the others at all. It also reasoned that "California alone is not likely to make a significant impact on the hunting and tourism market in Africa" though it "may have some impact." Regardless, it should be noted that impact on trophy hunting was the purpose of the bill and no notice or inquiry was made to African range nations whatsoever. African range countries responded as soon as they learned of the California bill targeting their programs. No other African country opposition was acknowledged but a copy of all country letters was faxed to every Committee Member then to every Assembly Member (80) as soon as the matter was scheduled before the full Assembly.



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Nevertheless, I suspect most did not read the different materials sent each morning for ten days.

Zimbabwe filed the longest response. The Secretary for Ministry of Environment, Water and Climate, T. Mutazu, wrote that in Zimbabwe "conservation is viewed as a culture" and that "(o)ur history and belief system is centered on nature, particularly the wildlife heritage." "Approximately 26% of Zimbabwe's land area... is dedicated to wildlife conservation" ... and Zimbabwe "subscribes to the principle of sustainable utilization of wildlife resources...." "Zimbabwe also views conservation as a business that should see economic dividends coming through for the benefit of our nation and the people..." The Secretary pointedly stated that "any unfavorable changes in an important importing country...has serious ramifications for our conservation initiatives especially sport hunting as a conservation tool."

The Secretary wrote of Zimbabwe's "robust legal framework governing the conservation and management of ... wildlife resources" in great detail (too much to repeat here). The country "deliberately increased the role of local communities and making provisions for ordinary citizens to participate in what can be regarded as highly structured reporting systems which are now more accommodating due to the advent of information and communication technicolor year." The Secretary explained, "Zimbabwe has also developed and implemented a robust strategy to curb wildlife poaching, illegal trade and trafficking..." including joint operations with neighboring countries that "has resulted in the declining trend of elephant and rhino poaching in recent years."

"Zimbabwe has a well-managed sport hunting industry that covers state safari areas, private conservancies and communal areas, which contributes significantly to conservation of both specially protected...and other wildlife species such as giraffe, zebra, hyena." The letter points out that Zimbabwe's elephant and rhino populations are on the increase, its elephant population has been down-listed to CITES Appendix

II specifically to allow for hunting trade and is the second largest population in the world as well as "more than twice the ecological carrying capacity of our protected areas," and "more than 83,000," citing the IUCN African Elephant Database. "Apart from our ballooning elephant population, our national rhino population is also steadily increasing and Zimbabwe is the 4th largest rhino range state in the world. Furthermore our lion population is also increasing, contributing an average of 8 % of the lion population increase in Southern Africa."

The Zimbabwe letter quotes a number of CITES Resolutions recognizing the benefits of hunting trophy trade which are worth noting here. The first is Resolution 17.9, Trade in hunting trophies of species listed in Appendix I or II which states:

CITES parties acknowledge that Member States are and should be the best protectors of their own wild fauna and flora and recognizes that well-managed and sustainable trophy hunting is consistent with and contributes to species conservation, as it provides both livelihood opportunities for rural communities and incentives for habitat conservation, and generates benefits which can be invested for conservation purposes. Parties further acknowledge that where economic value can be attached to wildlife and a controlled management system is implemented, favorable conditions can be created for investment in the conservation and the sustainable use of the resource, thus reducing the risks to wildlife from alternative forms of land use...."

It points out the guidance provided in Resolution 13.2 (Rev. CoP14 on Sustainable use of biodiversity: Addis ABBA Principles and Guidelines, and Resolution 16.6 (Rev. CoP17) on CITES and livelihoods:

"Recognizes that poor rural communities may attach economic, social, cultural and ceremonial importance to some CITES-listed species, and recognizes the resources that trophy hunting provides to certain local communities... (like "local communities living with wildlife in Zimbabwe")."

Zimbabwe points out that pursuant to CITES Resolution 16.7(Rev. CoP17) it's

Scientific Authority determines that the trade is non-detrimental. "There is also global recognition that the conservation status of a species may differ across its range (even within the same region), and that this needs to be taken into account" (Of course, SB 1487 treats all African countries and programs the same- the best with the worst.)

"Zimbabwe has gained vast experience which confirm the fact that, trophy-hunting activities can successfully be managed for the benefit of the species in cooperation with and provide benefits to local communities, where relevant..." citing Resolution 10.10 (Rev. CoP17) on trade in elephant specimens, Resolution 10.14 (Rev. Cop16) on quotas for leopard hunting trophies and Resolution 10.15 (Rev. CoP14). "The communal Areas Management Programmer for Indigenous Resources (CAMPFIRE) in Zimbabwe is a typical example which demonstrates how communities are benefiting from revenue from sport hunting of elephants."

Zimbabwe describes the high cost to rural people that needs to offset by sustainable use. That costs includes "more than 100 human lives..., approximately 8000ha of food crops..., (and) the loss of more than 3000 livestock units...of poor rural communities with very limited livelihood options" since 2010.

"Dangerous wildlife species...such as Elephant, Lion, Crocodile, Buffalo, Leopard and Hippopotamus continue to thrive inside and outside Zimbabwe's protected area network due to the incentives generated from sport hunting. The CAMPFIRE program benefits up to 800,000 households (approximately 25% of Zimbabwe's human population) both directly and indirectly. On average \$2 million (USD) is generated annually mainly from sport hunting, with local communities living with wildlife receiving 55% of the revenue directly from the safari operators. As a result of this, in Zimbabwe the local communities are the first line of defense against wildlife crimes and the most important stewards of our wildlife heritage."

"It is therefore important for the government ... to generate enough and sustainable revenue to fund conservation operations...for supporting research,

Santiam-poaching, problem animal control, operational expenditures and capital expenditures in the form of operational vehicles, radio communication equipment, game water supply, patrol equipment, education/awareness programs and strengthening community-based wildlife conservation projects."

"It is against this background that any changes in the regulatory framework (be it at State or Federal level in the United States of America which contributes approximately 65% of clients who visit Zimbabwe every year for sport hunting, has significant implications on our conservation efforts. Zimbabwe would therefore welcome any measures/initiatives... that can be directly linked to the conservation protection of African iconic species, instead of the proposed criminalization of lawfully acquired specimens from populations that are sustainably managed...."

Namibia's Permanent Secretary, Malan Lindeque, wrote that country's concern:

"Hunting is a crucial part of the biodiversity economy of Namibia and one of the most important mechanisms for the protection of wildlife habitat outside State protected areas. It is entirely false that other forms of tourism could replace hunting. Tourism works well and is a competitive form of land use in a few select areas that are generally photogenic and readily accessible. Much of Namibia does not fall in this category. Hunting involves a small number of people who do not require the high level of capital investment in accommodation and other infrastructure....Namibia has nearly four decades of experience with this matter and we have created strong incentives through the sustainable use of wildlife, included through hunting...."

As a result, there is three times more wildlife on land outside State protected areas than within such areas. State protected areas cover 18% of the land surface of Namibia and a further 25% constitute communal (State) land and freehold land used predominately for wildlife production. Namibia now holds the largest population of the black rhinoceros in Africa, and nearly half of this population occurs on land outside of protected areas. Our national elephant population has increased from 7500 animals in 1995 to over 20,000.... "

The letter goes on to state that "a large percentage" of its elephant, lion, leopard, and rhino exists outside of protected areas and all are increasing because of the use of economic incentives. "This achievement will be undermined by the Bill under consideration."

"It is important to understand that ...(SB 1487) will have a direct negative impact on the livelihoods of rural people including marginalized communities of Sans and Himba people."

The letter states that the California bill would violate CITES which provides countries, not political states or divisions of countries, can draft stricter measures. Also, Article III of the General Agreement on Trade and Tariffs, 1947, commits Parties to national treatment, likely making SB 1487 a violation. We have this under consideration.

The Director General of South Africa's Department of Environmental Affairs, Ms Nosipho Ngcaba, wrote: "Historically, sustainable utilization of species through ranching and legal hunting has played a role in the growth of wildlife populations, including that of lion, elephant, and rhino.... Through sustainable use, more than 20.5 million hectares of private-owned marginal

land has been converted to productive wildlife ranching land...."

"We would like to caution against assumptions that the adoption of the Bill... will result in the protection.... instead, the bill will effectively rescind all the conservation efforts made by the range states to protect those species.... Possession of legally acquired specimens should be promoted, whilst strong action must be taking to address illegal activities.... Lawfully managed, sustainable hunting is an integral part of South Africa's constitutionally-enshrined principle utilization. The hunting sector is valued at arid R6.2-billion per year.... The Bill will negatively impact the zebra and our other hunted populations that have significantly benefited from the U.S. market. It will reduce our resources, to the ultimate detriment of our conservation."

It is now in the hands of Governor Brown of California, who can veto the bill that will otherwise become law. We think the bill violates the ESA, CITES, NAFTA, Foreign Relations Restatement, and the Interstate, Dormant Commerce and Due Process Clauses of the U.S. Constitution and more. It demonstrates the perverse sense of ethics of those that would rather see the iconic species cease to exist and take habitat and other species and African people with them, rather than be hunted. The experts and range countries agree that the species and total scope of biodiversity would be worse under the bill. That it not protection, nor is it acceptable ethics or morality. It is perverse morality that threatens the species, reinforced by subterfuge.

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