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## “SERVING THE HUNTER WHO TRAVELS”

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*“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

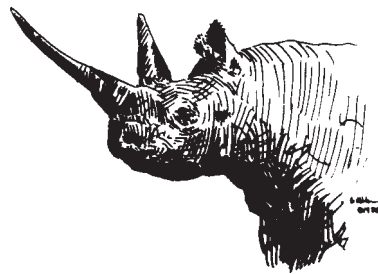
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#### Black Rhino Hunting Developments

*By John J. Jackson, III*

**T**here have been several developments favoring the reopening of limited black rhino hunting. In the Republic of South Africa, the Department of Environmental Affairs and Tourism, DEAT, has allocated five black rhino for hunting. The Free State province got one, Limpopo province one, Mpumalanga two and North West Parks Board got one. DEAT does not wish to be engaged in the marketing of the hunts, so more details about the identity of the permit holders and conditions are not being released by them. Conservation Force has pledged to assist any US hunter with their trophy import permitting as a free public legal service. Under provisions of the Endangered Species Act, the US Fish & Wildlife Service may permit the importation of a hunting trophy if the underlying hunting “enhances” the survival or propagation of the hunted species in the wild. It has been the practice of the USF&WS not to find “enhancement” of “endangered” species in the past, but it has a proposal to change that practice to

support import of hunting trophies in select cases where the taking is a net benefit to the species and part of a range nation’s conservation program for the species. Aside from that “enhancement” proposal, the USF&WS has long permitted import of trophies of



captive bred bontebok from private ranches in South Africa even though they are listed as “endangered”. There is a special regulatory provision providing that culling of surplus animals in captive herds is “enhancement.” That provision should also apply to surplus captive-bred black rhino that

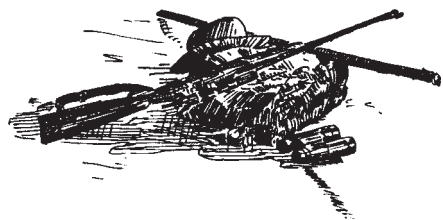
are privately owned. It is important that the USF&WS support an increase in rhino populations through private landowner incentives.

A long-awaited article entitled “Trophy Hunting of Black Rhino *Diceros bicornis*: Proposals to Ensure its Future Sustainability” has finally been published in the *Journal of International Wildlife Law and Policy*, Vol. 8, No. 1, Jan-March 2005. This article was co-authored by nine members of IUCN’s Rhino Specialist Group. Though just published, it was written before the quota proposals and adoptions at CITES COP13.

The authors point out that “Article 1 of the Convention on Biological Diversity (CBD) promotes the role of sustainable use in providing people with the necessary incentives to conserve biodiversity, which on land ultimately requires decisions about the opportunity costs of different forms of land use .... The CBD has ... based its aspirations on situations where wise use has led to positive incentives for conservation. For example, the loss of many

native species after the European colonization of North America and Africa led sportsmen to protect their interests by developing conservation programs ... [S]portsmen who fished and hunted for pleasure, rather than commercially or out of necessity, became a spearhead for formal policies to conserve wildlife and its habitats.” (citing a paper yours truly presented in Tanzania).

Of note, the authors state that “[S]outhern white rhinos started to increase in numbers (in Namibia and South Africa) well before the 1977 ban on all trade in rhino horn (their original Appendix I listing), and their rate of increase has not improved as a result of the 1977 ban.” Isn’t it unconscionable that the USF&WS had to be sued to let trophies be imported after it was listed, even though it was not



on the US Endangered Species List? The actual practices and applied policies in the USF&WS are no better today.

The authors state that the “ongoing recovery of southern white rhinos was enhanced by... two key measures. First, white rhinos were moved to new areas, including from state to private land, once state-protected areas had reached their carrying capacities. Second, limited and sustainable use, through trophy hunting and live sales...” White rhino have been downlisted by CITES to Appendix II, “but only to allow for hunting and live sales, and not for sale of horn.” The authors point out that white rhino are no longer listed as threatened on IUCN’s *Red List* as a consequence of the management regime now planned for black rhino.

Likewise, the protection of black rhino in South Africa and Namibia has

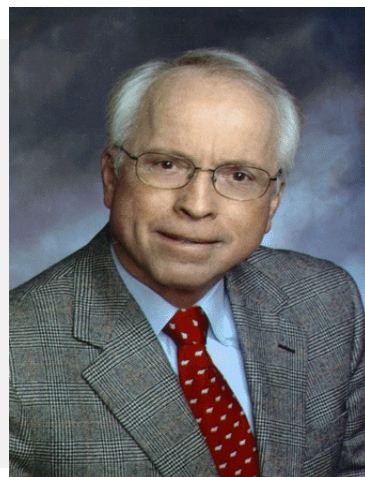
been good and their “populations have continued to increase.” Though the initial recovery of the black rhino has been on state-protected areas, over the past 10 to 15 years both countries have begun encouraging the private sector to propagate black rhino as they did the white rhino.

The authors cite Resolution Conf. 9.14 of CITES that “recommended range states, *inter alia*, to include provision for the reinvestment of revenues derived from the use of rhinoceros that is consistent with the Convention, in order to offset the high costs of their conservation and to facilitate the long-term goal of sustaining, on a basis of self-sufficiency, their rhinoceros conservation efforts.”

The authors point out that “conservation budgets for state-protected areas in this region have declined,” and “[p]rivate landowners have difficult land use decisions to make on whether they take on the security risk of managing species of such conservation importance and financial value... without any incentives to do so. However, wildlife increased by 80 percent on private land in Namibia when legislation changes allowed landowners to benefit directly from managing wildlife on their land.”

The nine co-authors recommend that national quotas not exceed 1 percent of the national populations “to follow the successful model for white rhino” and to “help keep prices at a premium.” That is more than 10 black rhino in each country, which is twice the quota of five in each of the two countries that was adopted by consensus at COP13. South Africa did initially request a quota of 10, but voluntarily reduced the request to five.

The article has an insightful paragraph of genuine interest to all hunters whether they are concerned about black rhino or not: “The use of hunting opportunities as a conservation tool, however, has led to differences of opinion over whether wildlife should or should not be killed to promote conservation objectives. For many people, their main concern focuses on the welfare of the individual animals targeted for hunting, rather than the



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broader issues of conserving viable populations of the species and their associated habitats. When this moral concern is asserted under the rubric of sustainable use, it often masks their real position that killing individuals of those species is unacceptable. Unfortunately, this pits opposing positions against each other, even though most conservationists, whether for or

against sustainable use, are fully engaged in the common objective of finding incentives to conserve wildlife and its habitats. In other words, many individuals adopt a relatively fixed position on hunting, irrespective of whether hunting is sustainable biologically or provides an incentive for further conservation, as required by CBD Articles 2 and 11, respectively. In turn,

this adds to tensions that arise within arenas such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) when debating the use of charismatic species, such as whales, turtles, elephants and rhinoceroses, listed on CITES appendices. The debates over Africa’s top two species of rhinoceros are cases in point.” (*Citations omitted.*)

## Briefly Noted

**21<sup>st</sup> Animals Committee Meeting:** Conservation Force attends the annual meetings of the CITES Animals Committee. I have personally attended nearly every meeting since 1992.

“Regional Reports” are given of related conservation developments. The following are paraphrased items of interest from the African Regional Report delivered at AC21. This is lifted from Conservation Force’s internal report on the meeting:

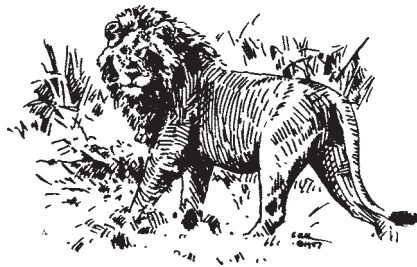
• **Black rhino:** South Africa has allocated its five black rhino, so the hunts may go forward this year. Black rhino are also being translocated to Zambia’s North Luangwa National Park (five to 20 are planned), and Zambia has developed a rhino conservation plan for their effective management.

• **Leopard:** South Africa is preparing a Population and Habitat Viability Assessment (PHVA) for its new increased COP13 leopard quota. It will be used to allocate the portion of the quota that was increased from 75 to 150. (It is still a minute quota for such an enormous country.) The Department of Environmental Affairs and Tourism has asked the Endangered Wildlife Trust to do the PHVA. A workshop was already held in April 2005. A national comprehensive conservation plan is being prepared for leopard.

• **Crocodile:** Namibia has set an internal quota of 25 for its Nile crocodile that were downlisted at COP13 (Import permits are no longer required). Zambia has finalized a “legal policy framework” to improve the management of its crocodile.

• **National Legislation:** Egypt has passed legislation prohibiting import

of falcon to protect its wildlife from falcons. Kenya’s Wildlife Conservation and Management Act (1989) Amendments have been referred back to Parliament for further review. (The amendments would permit locals more authority). South Africa has a new Biodiversity Act (Act 10 of 2004), and the regulations under it are expected to be finalized in October 2005. (All predator hunting is under review.) Tanzania is in the process of enacting a new *Wildlife Act*. (Though not men-



tioned, Namibia has a new National Act as well – Africa is progressing!)

• **African lion:** Kenya has initiated more aggressive internal lion conservation measures and has formed a national Large Carnivores Conservation and Management Working Group. The report also cites the “lion-human conflicts” study that Conservation Force is funding in Tanzania in preparation for the lion workshops. It also mentions that multiple regional workshops are being planned to develop conservation strategies following Kenya’s listing proposal at COP13.

• **Elephant:** Kenya reported an aerial count in the “Tsavo ecosystem” in

January-February 2005 recording 10,397 elephants – up from 9,128 recorded in 2002. It also reported that 91 elephants were poached nationwide in 2004. Zambia, Zimbabwe and Mozambique are developing a common elephant management plan for their shared cross-border elephants. The report gave the African Wildlife Foundation credit for the “financial support.” The *Report* also states that Kenya and Tanzania are working on cross-border elephant surveys and “issues,” but does not elucidate further.

**Non-resident Hunting and Fishing Rights:** There are two noteworthy developments since the passage of the *Reid Bill*, “Reaffirmation of State Regulating of Resident and Non-resident Hunting and Fishing Act of 2005,” Public Law No. 109-13, section 6036, 119 Statute 231. The State of Minnesota’s case against North Dakota has been dismissed, and there is growing evidence that discrimination against non-residents may get worse.

The federal trial judge dismissed Minnesota’s case that challenged North Dakota’s discrimination against non-resident waterfowl hunters, but he did not base his decision upon the *Reid Bill*. The decision can be found on Conservation Force’s website ([www.conservationforce.org](http://www.conservationforce.org), under “Info for Hunters,” “Nonresident”). The judge granted defendant North Dakota’s Motion for Summary Judgment that was already pending and ready for decision before the passage of the *Reid Bill*, not the newer Motion to Dismiss based upon the *Reid Bill*. That is also available on Conservation Force’s website at “Info for Hunters,”

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“Nonresident”. He granted North Dakota’s Motion for Summary Judgment before Minnesota’s reply to the *Reid Bill* challenge was due to the court. In short, on June 8, the judge threw out the case because “recreational” hunting is not commerce as a matter of law. “This court wholly rejects the Ninth Circuit’s analysis in *Conservation Force*. The decision is flawed in its reasoning and unprecedented.” The court reached its decision independently of the *Reid Bill*, rather than waiting for the briefing on that issue to be finished. “Minnesota’s time to respond to the recently filed motion has not yet expired.” Consequently, any potential challenges to the *Reid Bill* will have to await another case, unless the state of Minnesota appeals this trial court decision.

The trial court concluded with a statement that virtually contradicts its legal conclusion that non-resident recreational hunting is not and does not impact interstate commerce. We quote it here as an important message for everyone to consider, particularly those states that may tend to abuse non-residents. The judge said: “While North Dakota has not violated the Constitution by enacting new non-resident waterfowl hunting regulations, the wisdom of such a decision is questionable. Hopefully, the Legislative Assembly of North Dakota will carefully reconsider the decisions made in 2003 concerning the new hunting regulations and the ramifications to North Dakota in terms of the impact on tourism and economic development. To an objective outsider, the legislative and administrative changes made to North Dakota’s hunting regulations in 2003 seem ill-advised at best. North Dakota’s decision to differentiate between resident and non-resident waterfowl hunters may likely spur other states to do the same. As Minnesota has made clear in this litigation, its legislature is considering taking steps to restrict the fishing access of non-residents from states that limit access to fish and game based on residency. In retaliation, Minnesota is considering legislative changes which would ban non-residents from fishing during the first two weeks of

opening fishing season. North Dakota residents should not be surprised to see their access to recreational hunting and fishing opportunities diminish in other states, particularly in Minnesota. Hopefully, a more sane, objective, and reasonable approach will be undertaken by government officials from both states to end the litany of bickering.”

We at Conservation Force are not surprised at the court’s decision, as aloof, abstract legal analysis is more the bailiwick of higher level appellate courts. We are disappointed that the court avoided putting the *Reid Bill* to the test in such an advanced case.

Our growing concern is what states are now doing with their new express authority to discriminate. One place to watch is Arkansas where the local Wild-



life Federation has issued a report that there are too many waterfowl hunters and has specifically singled out non-resident hunters and recommended further limiting their number and participation, *Improving the Quality of Duck Hunting in Arkansas*. The report contains recommendations to the State Game Commission. One recommendation states: “[t]he AWF Duck Committee recommends limiting the number of hunters, particularly non-residents, on public hunting grounds through the use of permits or other means.”

The only support for this recommendation in the lengthy report was particularly revealing. It comes at the end of the section discussing national wildlife refuges: “Study and consideration should be given to implementation of a daily draw or permit system for hunting public lands to avoid overcrowding and over hunting, especially

as it applies to non-resident hunters. We have to curtail our ‘open-door’ policy of allowing all nationwide hunters access to our public lands. The Arkansas Game & Fish Commission should focus on their commitment to the Arkansas hunter.”

In a more recent letter dated May 31, 2005, after the *Reid Bill* passage, the Arkansas Wildlife Federation Duck Committee added a new recommendation that has no basis in the original report. It is entitled *Recommendation 8. Develop a new non-resident waterfowl stamp*. It states that “[f]rom a tourism standpoint in Arkansas, ducks are our ‘big game,’ attracting sportsmen from throughout the world, but our low price for the Arkansas waterfowl stamp would appear that we do not highly value this ‘franchise’ game animal. A higher priced, non-resident stamp would add revenue... and it would give those who don’t live in the Natural State an opportunity to contribute more to the state.... By having a totally different stamp for residents and non-residents, it would also be easier for the public and the commission to determine non-resident participation in waterfowl hunting.”

We feel this is symptomatic of the problem. In the West, there are too many big game hunters. Now there are too many waterfowl hunters in the Mississippi Flyway. Inevitably, those who are under-represented will lose access, even on federal lands, until Congress acts to at least control the worse abuses.

Those who lobbied for the *Reid Bill* professed that they only wanted to return to the way it was, but now we are hearing from some quarters that the discrimination may be worse than ever and even retaliatory. We need help from readers to police the abuses. Please report any and all worsening of discrimination in the pricing of licenses, the allocation to non-residents and the method of allocation or other abusive treatment of non-residents. The whole issue has now been raised to a Congressional level, and we expect hearings about abuses affecting interstate commerce and federal lands. – *John J. Jackson, III.*