



“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

Update On Kashmir Markhor

Conservation Force has filed three more permit applications for Kashmir trophies from the Chitral District of Pakistan. They were taken in the Tooshi Shasha and Gehrait markhor conservancies. Three American hunters paid \$150,000 each for the privilege of hunting the markhor. No less than \$105,000 dollars reached the actual conservancy, or village, located within it for every markhor hunted this past season, \$315,000.

The conservation funding received by the conservancies almost doubled what had been received previously, before an American, Wayne Lau, has been able to import his trophy. We expect the trophy import applications to be granted in due course, but have taken special care in preparing them because of the conservation role of the hunting. There is no question that the American market is the strongest, and American hunters have a strong conservation ethic.

We hope to establish the import of other markhor, such as the Astor, in the

future and continue pressing for the import of Sulaiman markhor (ESA-endangered), which is one of the most celebrated successes of sustainable use in the world. An example of that recognition occurred during the recent Conference of the Parties of the Con-



vention on Biological Diversity (CBD) in Bonn, Germany. There, the 80-year-old CIC (The International Council for Game and Wildlife Conservation) inaugurated the *CIC Markhor Award* for Outstanding Conservation Performance. The first recipients were the

Selous-Niassa Wildlife Corridor and the Niassa Game Reserve. Niassa is Mozambique's largest conservation area and the corridor links it to the Selous Game Reserve in Tanzania. The CIC reported that the markhor symbol was selected for the new award because markhor "population numbers have been multiplied 25 times in recent years through sustainable hunting tourism. Hunting income benefits the local population and arouses its interest in conserving wildlife." Of the many conservation dignitaries present and speaking at the award ceremony, the address of Robert Hepworth, the Executive Secretary of the UNEP/CMS Secretariat (United Nations Environment Program/Convention on Migratory Species) best addresses the markhor as the icon it has become:

“Ladies and gentlemen, the markhor inhabits some of the most magnificent high-altitude mountain ranges...One of the most rugged regions where the rarest and largest of these wild goats, the Sulaiman markhor, is found is

known as the Torghar Mountain of Pakistan. The name “markhor” means “snake horns”...and is an accurate description for these impressive horns.... (T)he markhor were on the road to extinction. However, the “snake horns” of the markhor have recently helped to reverse this trend! The species has become associated with a highly successful community-based conservation project. This project takes advantage of the high trophy value of the markhor’s “snake horns,” of which a small number determined by the CITES quota have been allowed to be exported since 1997. Foreign hunters paid US \$40,000 per trophy in 2006. The resultant revenue pays for rural development initiatives, such as health care, education and improved water management. This has created a strong incentive for local people to protect markhor rather than to hunt it themselves for food or recreation. The result in terms of population numbers has been astounding. In 1985 fewer than 100 markhor were all that was left in the Torghar area and this is when the Torghar Conservation Program was initiated (and that is when founding Conservation Force Board Member Dr. Bart O’Gara suggested the conservation hunting strategy). In 2005, the markhor population size in the same area was estimated to have risen to over 2,500 animals. A 25-fold increase in numbers in 20 years – what an achievement! The Convention on Biological Diversity refers to the Torghar project in Pakistan as the single best example of ‘best practices’ of sustainable use. Thus I welcome the initiative...(of the CIC) to use the markhor as its flagship species for its new award to honor conservation projects that are community-based and that successfully use hunting as a tool for rural development. Sustainable use projects are extremely difficult to implement successfully, and thus it is all the more important to recognize those examples that work and to share the lessons learned....”

The International Affairs Section of the US Fish & Wildlife Service does

not grant permits for import of markhor for the Torghar Program cited, but it did have the good sense to grant one from the Chitral area last year and hopefully will grant the three new applications as well. A special thanks is due Sam Jaksick, Jesse Kirk and Edward Yates who are the three hunting pioneers following in Wayne Lau’s footsteps in the Chitral region. We are privileged to be able to further such a program and to work with such a caliber of hunt pioneer partners.

DATELINE: CALIFORNIA

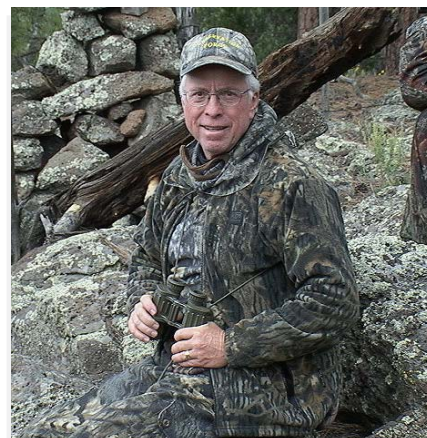
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**Polar Bear Imports:
Immediate Ban Upheld**

The Federal District Court in Oakland, California, denied Conservation Force’s Request for Reconsideration of its Order that the listing of the polar bear be made effective immediately. On July 11, it denied the request on the grounds that it had already considered and weighted polar bear hunters’ interests when it made its original decision and the hunters this Spring had “assumed the risk” for they knew the bear was “likely” to be listed from the point in time the USF&WS proposed the listing.

In three separate briefs the Secretary of Interior and USF&WS opposed allowing the trophy imports. The Justice Department did admit in their brief that the Secretary would have been inclined to give the Spring hunters sufficient time to import their trophies had the Court not ordered that the listing be made effective immediately. We were unsuccessful in persuading the Court that it could fashion a remedy to allow the trophies to be imported as surely as it had created the problem by denying the delays after notice is published that are customary, appropriate and separately protected by statute and the US Constitutional right to “due process” and “property.”

We had hoped to get the trial judge to correct her own error. We have at least been successful in building a



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record and fortifying our standing to appeal her initial decision that caused the problem. We will now appeal, as well as step up our efforts in Congress. The service will no doubt send out denials to all the applicants and permit cancellations to those with permits that did not have time to use them. That will include virtually every hunter in the Spring of 2008.

We have also been compiling the expenditures on the hunts this Spring of the trophies that can't be imported. One thing is evident: The costs are more than we had initially estimated. Thus far, the costs of the hunts range from \$42,000 to \$68,000 when airfare, tips, special gear, hotels, permits, etc. are included. Those who have not sent in their tabulation need to do so. When a mid-range average is made between the high and low figures received to date, the total loss is \$3,360,000 (60 estimated hunters at \$56,000 average expenses).

We fervently regret that the USF&WS itself did not appeal the Judge's Order that the Final Rule be made effective immediately and that it chose to oppose the reconsideration. The appellate case is unprecedented and should prove interesting. It will provide guidance in the future as other animals are listed, as surely they will be. We hope the appellate court will rank the Constitutional property rights of the hunters over the mere statutory rules under the ESA and also follow the rules of equity. So far in this instance, animal rights have exceeded human rights. Both are protected, but we believe the Constitution is a higher law.

In the meantime, the Oakland trial Judge has resolved that she will retain

jurisdiction over the polar bear case and all polar bear listing related cases will probably be transferred and consolidated in that court, as the rules provide for courts where a matter is first filed.

□

Enhancement Permits Filed

■ Still on the subject of polar bear, on July 10, Conservation Force filed six test permits to import polar bear trophies under the “enhancement” permit provisions of the Marine Mammal Protection Act (MMPA). No such permit has ever been granted for import of a sport-hunted trophy, but it is the only



possible kind of permit after the listing, according to the USF&WS.

In three instances, the USF&WS has made it clear that polar bear trophy importation is now only possible with an “enhancement” permit under the MMPA. This is an entirely different kind of “enhancement” than under the ESA. The ESA itself exempts trophies of “threatened” listed species protected on Appendix II of CITES, like the polar bear. It is the MMPA that presents the problem for listed bear.

In the Final Rule listing all polar bear, the Special Rule the USF&WS issued simultaneously and in a recent

written solicitor's opinion on polar bear trophy importation, it is suggested that enhancement permits may be granted. Congress created a MMPA “special exception” in 1988 for enhancement permits, but neither the USF&WS nor NOAA have adopted regulations expressly covering trophy imports of marine mammals. The Marine Mammal Commission (MMC) must be consulted during the permitting process and has let it be known that it disapproves of import of lethally-taken polar bear trophies. Not surprisingly, they also opposed the import of polar bear trophies under the 1994 Congressional Amendment which provided for the import of polar bear for the past decade. It remains to be seen how the USF&WS will treat these six test applications. We may end up in court on these as well.

We selected six polar bear taken in the Gulf of Boothia for the test import permits. The USF&WS was on the verge of approving imports from that region when the listing petition was filed. The bear population there has increased and may be too dense for its own good. The bear harvest there has been less than the quota and the hunting there is part of the conservation strategy. It is also an area the USGS Reports conclude is a geographic belt of the Arctic that is not expected to lose its Summer ice in the next 45 years. These permits will be a major undertaking and will be published in the Federal Register and open to comment. We have been preparing them behind the scene for months. The trophies have already been taken and were considered “conservation hunting” by the IUCN at the time the hunts occurred.

And Finally....

A Word About The Bob Kern Trial

■ was an attorney of record for Bob Kern and participated in his defense in the trial in Houston. There is much to learn from this unprecedented case that may go unknown unless it is shared here and now.

The trial was in Houston because that is the port the trophies were im-

ported through. Of course, that added enormous cost to the defense for the hearings and motions before the trial and during the trial itself. Hunters may wish to consider this when importing their trophies. Brokers like Bob Kern have no control over what port the trophies will be imported through. It is

generally best to have local counsel. But when that counsel is across the country, the communication and preparation can't be as thorough. Make no mistake about it: Defending yourself can cost you every cent you have. These are the laws hunters themselves passed.

“Serving The Hunter Who Travels”

A Lacey Act violation is a felony when it is knowingly committed even though the foreign law that is allegedly violated is a minor offense, no matter how minor. You read that correctly. The foreign country need not care, want to prosecute or cooperate in the prosecution. In this case, no one in all of Russia had ever been penalized for the Russian misdemeanor before the US Law Enforcement's *Fire & Ice* investigation began. The Russian authorities themselves had not instigated the investigation. To the contrary, the local Russian authorities oversaw the hunt and government entities operated the helicopters and directed the alleged criminal conduct. None of those mitigating facts deterred the prosecution one iota. Lesson: The letter of the local regulation, not the custom, practice or even the will of the foreign government controls.

Bob Kern did not pull the trigger. He was prosecuted for aiding others, particularly for knowingly aiding in the importation after the fact. Lesson: Assisting someone else who has committed a minor offense is a felony when you know the animal was taken illegally. That includes importation of the trophy at a later date thousands of miles away. It could be your employee helping, or one hunter assisting another. If your hunting buddy has violated the local law, distance yourself *completely*. Perhaps brokers can protect themselves by prohibiting or preventing the import of any trophy they or their employees and agents learn to have been taken illegally. Remember, in the instant case, the grand jury refused the charges against the hunters that pulled the triggers, yet the US government separately prosecuted both the company and individual for assisting the hunters with importation after the alleged violations.

Penalties for recreational hunters, guides, and in this instance, a broker company and broker, are almost always disproportionate to the underlying offense. Bob Kern faced a fine of \$250,000 and five years imprisonment. Under the sentencing guidelines, he most certainly would have had to serve hard time in jail had he been convicted.

He would have been a felon with no right to vote or even be in constructive possession of any firearm. That would make it another felony to be in the same household as someone else's firearms, like his wife's or clients'. Such heavy penalties place a defendant at a disadvantage in plea-bargaining negotiations once he or she is threatened with prosecution. There is nothing more disproportionate under the law. Of course, under the law, the jurors are also instructed that they are not to consider the seriousness of the penalties, only whether or not a violation has occurred.

In Bob's case, 12 jurors unanimously found him and his company not guilty after a week-long trial. Don't think for a moment that the trial was easy. The entire jury pool had to be exhausted to select the 12 jurors and two alternates. During jury selection, there was an unusually certain and instantaneous bias against trophy hunting. I've never seen so many hands come up so quickly as when the prospective jurors were asked if they were opposed to trophy hunting. The judge, the senior judge in that circuit court, said he had never before exhausted a jury panel in the selection process. Believe me, it was plain frightening. Over objections, the trophies were on display in front of the jury throughout much of the trial. No, it was not easy.

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The prosecution could not resist painting a picture of dead, lifeless moose dangling below a helicopter even though it was being transported by the local Russian government to children at an orphanage in southern Siberia who would otherwise not have any meat for months.

In short, it is not easy to get a fair trial. The conviction rate in federal court is above 90%. It is not where you ever want to be. Don't violate any foreign law or law of another state. If in doubt, don't bring the trophy or meat (any product) home because that is when jurisdiction attaches and the time for prosecution starts running. In this instance, the species were common moose and sheep that were to be taken by the local government anyway to feed the local people. Had the game been listed species, as is often the case, it would have been even more difficult to get a fair trial. In that instance, the time limits on prosecution may also not run as long as the trophy is in your possession, yet disposing of it can be considered destruction of evidence, which is another crime.

Because of all this, I suggest a high level of care on the part of hunters who hunt out-of-state and in foreign lands. By that I mean avoid even the appearance of unlawful activity of any kind. Be on the defensive. Don't attempt to import a trophy or assist others (attempt is a full offense under the Lacey Act) when in any doubt whatsoever about the underlying hunt.

A final word about this case which some see as a black eye to the hunting community: The hunters did not get the hunt they wanted or expected or that their broker thought they were to get. It was the first opening tourist hunt there and the longstanding legal practice was for the government itself to helicopter-hunt for meat (a "meat hunt") to feed the local people. The hunters did what they were told to do by agents of the state and were told that it was legal as well. All said, remember that even though the method or manner in which a hunt is conducted does not feel right, or other hunters or brokers may complain, it is not necessarily illegal. – *John J. Jackson, III.*