



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 July 2013

USFWS Denies Petitions to Remove Private, Captive Populations of Species from ESA: Scimitar-horned Oryx, Dama Gazelle and Addax Denied

On June 5, 2013, the US Fish & Wildlife Service (USFWS) denied two petitions separately filed by the Exotic Wildlife Association and Safari Club International to remove the US captive-bred "populations" of the *Three Amigos* (the scimitar-horned oryx, dama gazelle and addax) from under the Endangered Species Act (ESA), 78 FR 33790. This negative 12-month finding against the "removal" because it was found "not warranted" terminates the USFWS' consideration of the two petitions. The hope for relief from the special permit regulations required to hunt these populations was unsuccessful and is finished.

Basically, the USFWS ruled that listing and delisting authority were for "species," and that a US captive-bred population was not a separate "species." It also ruled that the ranched US population is not a *Distinct Population Segment* of the "species" or a separate "range" "in the wild." The reason given is that SPR (separate range) "analyses have been and will be limited to geographic areas where specimens are found in the wild." "Range" is interpreted as "being the natural range of the specimen in the wild." The captive-bred animals are not a "distinct population segment" and are not in their natural range. Regardless, the USFWS reasoned "if a species is found to be endangered or threatened in only a significant portion of its range, the entire species is to be listed as endangered or threatened," according to its most recent published draft policy defining the meaning of the term "range" (76 FR 76987, December 9, 2011).

"(N)either SCI nor EWA has petitioned

DATELINE:
United States



John J. Jackson III

to remove or reclassify a grouping of members of the three antelope that qualify to be designated as a separate 'species' under the Act, and therefore the petitioned actions are not warranted.

"Based on the analysis... it is the Service's conclusion that, although the Act does not expressly address whether captive-held specimens of wildlife can have separate legal status, the language, purpose, operation and legislative history of the Act, when considered together, indicate that Congress

did not intend for captive-held specimens of wildlife to be subject to separate legal status on the basis of their captive state. This includes designating groups of captive-held specimens as separate DPSes [Distinct Population Segments], excluding captive-held specimens during the listing of wild specimens of the same species, and de facto creating separate listed and nonlisted entities by designating one or more DPSes consisting of wild specimens and leaving captive specimens unlisted. It also would include using the 'significant portion of its range' language in the definitions of 'endangered species' and 'threatened species' to provide separate legal status for captive-held specimens.

"For the reasons given above, the US captive, or US captive-bred specimens of, scimitar-horned oryx, dama

gazelle and addax, do not qualify as separate 'species' or otherwise qualify for separate legal status under the Act. Therefore, we find that delisting the US captive, or US captive-bred specimens of, scimitar-horned oryx, dama gazelle, and addax, is not warranted. This determination is consistent with our position on the status of US captive-held members of these three antelope species since the 2005 listing decision (70 FR 52319; September 2, 2005). During the public comment periods on the proposed rule to list these three species in their entirety (56 FR 56491, 68 FR 43706, and 68 FR 66395), the Service received several comments indicating that it should list only wild specimens of the three species. In the final rule, the Service noted these comments but stated that 'it would not be appropriate to list captive and wild animals separately' (70 FR 52319; September 2, 2005)."

In short, the USFWS had decided this before in both the original listing decision and in the adoption of its special regulations when it was raised by commenters.

Now that the decision has been made whether captive-held specimens

can have separate legal status based on their captive state, the effect of the listing on the private ranchers that own and manage the *Three Amigos* has become more important. Positive benefits from the breeding and hunting can and do continue. The USFWS continues to recognize the benefits arising from hunting and



Dama Gazelle. Photographer: Mak Thorpe, taken 2006 at Honolulu Zoo.

has fortified its own administrative structure to support permitting for enhancement of the species not just within the United States, but in the species' natural range. The USFWS emphasized that significant ranch breeding and hunting continues in over 100 permitted operations.

"Although these captive specimens remain listed as endangered under the ESA, having these captive individuals listed under the ESA does not necessarily ban the hunting of these individuals on game ranches in the United States. We recognized at the time of listing the species that allowing ranches to continue in their management efforts for these species could help to ensure that a viable group of antelope would be available for reintroduction purposes if conditions in the species' native range improved. Therefore, we have been authorizing well-managed ranches to conduct various management practices, including limited hunting, through our Captive-Bred Wildlife Registration regulation and permitting process. Since the current regulations went into effect on April 4, 2012, we have approved 139 ranches to maintain the species, of which 107 have been authorized to conduct limited hunts to maintain viable herds on their ranches. We accomplished this effort through use of a simple application process through which ranches obtained the necessary permits."

Conservation Force is the leader in assisting private ranchers in obtaining and operating within the enhancement permitting system. Conservation Force is the "authorized legal representative" of most of the ranches, and the number is growing. We fully supported the

separate listing treatment of the US population at each step from the initial listing in 2005 through the comment period on the present "special rule" requiring permits (January 2012), but it is not to be. With support from Dallas Safari Club, Houston Safari Club and private individuals, particularly Lacy and Dorothy Harber and Ricardo Longoria, we have been there for the ranchers in the interim. Good thing we were.

The permit forms for 1) captive breeding and 2) take (hunting) permits are available on the USFWS website at www.fws.gov/permits/application-forms/ApplicationE.html#esa. Use form number 3-200-41 for captive-bred registration and form number 3-200-37 for take. This information is also available on Conservation Force's website at www.conservationforce.org. Just call us (504-837-1233) and let us help you.

Let there be no doubt that Conservation Force is all about honing hunting as an even greater force for conservation than it has already been. Hunting is saving these three species in the United States and abroad, and we are facilitating the necessary permitting. Conservation Force has helped the ranchers and the conservation of those endangered species through these trying developments, but we need help too. We need help to step up our assistance program. Please help by making a tax deductible contribution to Conservation Force at PO Box 278, Metairie, LA 70004-0278. ■

Polar Bear Litigation Developments

Center for Biological Diversity Threatens New Suit

On May 16, 2013, the Center for Biological Diversity (CBD) sent a 60-day notice of intent to sue the Department of Interior and US Fish & Wildlife Service (USFWS) for failing to take mandatory, non-discretionary steps required by the Endangered Species Act (ESA).

First, the CBD asserts that USFWS has failed to initiate the required five-year Status Review since the listing

in 2008. The status of listed species should be reviewed every five years. Moreover, the CBD sets forth pages of citations to the effect that climate change, bear habitat and the status of the bear are worsening. It argues that the bear should have been listed as "endangered" in the first place but that the required five-year review will demonstrate it is endangered today. Regardless, the review is a mandatory requirement.

Second, the CBD's notice of suit



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claims that the USFWS has failed to complete a Recovery Plan, though it grants the USFWS has been working on such a plan, which, it argues, in itself demonstrates such a plan is warranted. (Of course, a recovery plan and designation of critical habitat do not extend to populations of bear beyond US borders but does cover shared populations.)

The irony is the Administration recently proposed the Appendix I listing of the bear at CITES CoP16 to please the protectionist groups. Now CBD is using USFWS' own arguments for CITES uplisting against the USFWS' position that the bear should not be listed as "endangered" under the ESA. The nine-page *Notice of Intent to Sue for Failure to Issue Polar Bear Status Review and Recovery Plan* is full of citations arising during the CITES uplisting campaign of the USFWS.

Another irony is the CBD's claim that the commercial harvest of polar bear for skins and parts has become a growing threat and in itself warrants listing the bear as endangered for "overutilization." Of course, the conversion to and growth in commercial trade is a response to the ESA listing of the bear as threatened. That listing triggered the provisions of the Marine Mammal Protection Act, which prohibited trophy trade. The "threatened" listing has reduced the value of the bear and stimulated less lucrative, alternative trade. The CBD's 2005 petition to list the bear is the cause of the rise in alternative trade and the devaluation of the species. That said, the CITES Parties at CoP16 determined that none of the trade warranted uplisting on CITES.

The CBD complains that the USFWS adopted special regulations that exclude remedial measures to control the climate change that endangers the bear. It points out that if the bear was reviewed and uplisted as endangered, the special regulations protecting industry rather than the bear would fall along with the threatened listing and would not protect the CO2-producing industries any longer. To the contrary, it claims, "Plans for Arctic development, including both oil and gas drilling and shipping, have crystallized and demonstrated risks even beyond those originally anticipated."

There is no doubt that the CBD wants to change the course of everyone's life, not just the people of the Arctic North. The polar bear and the Arctic people are just "sacrificial lambs."

Joint Plaintiffs' Suit Challenging the Polar Bear Listing

The courts have shown no interest in overturning the polar bear listing decision or the special rule prohibiting import of trophies. The reception to the litigation has been like a breakwall.



On June 30, 2011, Judge Sullivan of the District Court for the District of Columbia denied all challenges to the threatened listing. On March 1, 2013, the Court of Appeals upheld the listing. On April 29, a rehearing was denied.

We are now preparing a writ to the US Supreme Court on a very select few issues that must be filed before July 29, 2013.

We stand convinced that the "threatened" listing was premature and that the negative effect on Canada's program and the net impact of the listing should have been the primary concern. In all but exceptional circumstances, agencies today can pretty much do what they want. When the courts fail, it calls for Congressional fixes.

Polar Bear Enhancement Permits

On May 9, 2013, Conservation Force orally argued the appeal of the denied enhancement permits for certain populations of polar bear. The argument went well, even better than expected, yet you could tell that the panel of three judges did not want to overrule the Agency. We expect a decision shortly that may remand the permit denials to the US Fish & Wildlife Service (USFWS) to do the permit processing again. The Panel was certainly trying to find reason not to reverse USFWS' denials; so, we just have to wait and see.

Win or lose, enhancement permits for select populations is the future. We are pioneering that future if there is to be any. If we can import "critically endangered" black rhino under real threat, perhaps in time a permit application will ring true for import of polar bear on a bear-by-bear basis. ■

Finally, All Gray Wolves Proposed for Removal from ESA

The US Fish & Wildlife Service (USFWS) has proposed the delisting of all gray wolves in the United States and Mexico. It is proposing, however, the Mexican wolf be treated as a separate subspecies (*Canis lupus baileyi*), that it be treated as endangered and that the subspecies' protection be stepped up. While the Mexican wolf subspecies will have stepped up protection and be the new, narrowed focus of the USFWS, the gray wolf

populations' management will pass back to the states when completely removed from the Endangered Species Act (ESA) list. The proposed rule also constitutes the completion of a status review for gray wolves in the Pacific Northwest initiated on May 5, 2011. Finally, the new gray wolf proposal replaces the May 5, 2011 proposal to remove protection for *C. lupus* in all portions of 29 eastern states (76 FR 26086).

"Today," according to the USFWS,

"there are at least 6,100 gray wolves in the contiguous United States with a current estimate of 1,674 in the Northern Rocky Mountains and 4,433 in the Western Great Lakes."

The comment period is open for 90 days and all comments will be posted on www.regulations.gov at Docket No. FWS-HQ-ES-2013-0073. Commenters may wish to view the Service's wolf information page at www.fws.gov/graywolfrecovery062013.html ■

Status of the Petition to List the Lion as Endangered: African Lion Workshop

The 12-month finding on the anti-petition to list all African lion as endangered is still months away in our estimate. This is evident from the planned events related to this issue. Conservation Force has been invited to participate in a one-day *African Lion Workshop* in Arlington at Service Headquarters on June 26, 2013, to discuss the conservation status of the African lion.

"The purpose of this workshop is to provide a forum for African lion species experts and key stakeholders to provide information that may be useful in the status review of the species. A status review is a comprehensive assessment of a species' biological status and threats under the Endangered Species Act of 1973.

"The US Fish & Wildlife Service was petitioned to list the African lion (Panthera leo leo) under the Endangered Species Act on March 1, 2011. On November 27, 2012 we published a 90-day finding, which initiated the status review. As part of the status review, the Service is assembling the best scientific and commercial information available. We have taken many steps to achieve that outcome, including contacting the species' range countries to request that they provide any new information on the status of the African lion. Your participation in the upcoming workshop will be another important step in ensuring that we have the best available information upon which to base our petition finding."

I am scheduled to make a PowerPoint presentation on *Secure Habitat and Prey in the Eastern and Southern African Range*. During the workshop, the presentations will be open for discussion by the entire group. "The presentations and other

information shared at the workshop will be part of the administrative record for the status review..."

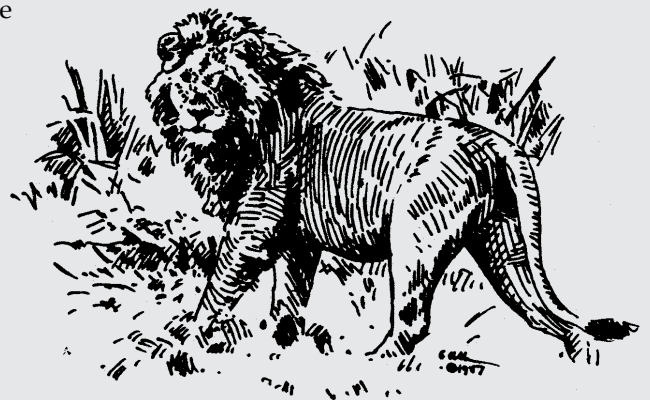
It is Conservation Force's position that the lion should not be listed at all in Eastern and Southern Africa, which is its principle range today, and should only be listed as threatened in the West and Central Africa range. Given the high fecundity of lion (rabbit-like birth rate), the lion is not at risk of endangerment if there is adequate habitat and prey and necessary management infrastructure. Some of the largest protected areas in the world exist in Eastern and Southern Africa and the secure habitat and prey they provide ensures long-term survival of the lion. Compare Yellowstone National Park in the United States (2.22 million acres) with Kruger National Park (4.81 million acres), Selous Game Reserve (11.07 million acres), Niassa Reserve (10 million acres), Hwange National Park (3.62 million acres), Kafue National Park (3.54 million acres), Etosha National Park (5.51 million acres), Chobe National Park (2.89 million acres), Serengeti National Park (3.65 million acres), et al. These areas are secure and growing. Billions of dollars are being expended every year to create 10 tri-national conservation areas in Eastern and Southern Africa, incorporating these protected areas. Peace Parks Greater Limpopo conservation area is 100 million acres, the Kavango-Zambia area is 110 million acres (each greater than all national wildlife refuges in the United States), etc.

The most up-to-date

estimates show approximately 32,000 lion in 78 lion areas. Most are in Category I Lion Conservation Unit (LCU) areas expected to last more than one-hundred years. Ten areas qualify as "strongholds" (four in East Africa, six in Southern Africa) comprising 24,000 lion. Those strongholds are of secure lion in populations of 500 or more that are stable or increasing in number. Another 4,000 are in potential "strongholds."

Countries like Tanzania have devoted 40 percent of their total habitat to protected areas. Hunting areas are a third of that, but more significantly, 80 percent of the surface used by lions is located inside hunting areas that form part of the protected area system.

Conservation Force is presenting a PowerPoint presentation with this information and much more that makes it clear that the lion should never be in danger of extinction or even threatened (at risk of becoming in danger of extinction). We have consulted the foremost lion experts in key areas to prepare the graphical sections of the presentation to authoritatively demonstrate the points. We are to make one presentation but with parts composed by the foremost experts in the world. ■



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