



“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

DATELINE: CANADA

Downlisting Success
Wood Bison Initiative
Enters Final Stage

The USF&WS has completed its 12-month finding on the petition to downlist the Canadian wood bison. It has proposed the downlisting from “endangered” to “threatened.” It has also notified the court in Conservation Force’s *Wood Bison II* suit and moved that its published proposal moots that part of the suit. The USF&WS claims in court that the proposal fully satisfies Conservation Force’s suit claims to compel both the compulsory 12-month finding on the downlisting petition and the claim to compel the mandatory five-year review required for all listed species. Considering the low number of foreign species that have ever been downlisted, this is a two-fold success.

On February 8, 2011, the USF&WS finally published the 12-month finding and proposed rule in the Federal Register to downlist the wood bison

from “endangered” to “threatened.” This has been promised for more than a decade. The Federal Register Notice can be found on Conservation Force’s website under *News and Alerts* and at Federal Register Vol. 72, No. 163, Thursday, August 23, 2007, page 6734.

The Federal Register Notice allows for 60 days to comment, until April 11,



2011, and states that the USF&WS will make its final determination within 12 months of February 8, 2011. Of course, the mandatory 24 months for the whole rule has already passed, and the USF&WS is notorious for not meeting promises about non-discretionary obligations. Unless we can come to some agreement, Conservation Force and its

allied organizations will no doubt be filing a third suit, *Wood Bison III*, to ensure it is completed in less than 12 months instead of waiting until the 12 months pass before initiating suit, which can drag on for years after the deadline has already passed. It took more than two years after suit was filed to get the positive 12-month finding. In total, it will have taken about five years from the petition filing in 2007, suit and all.

The USF&WS is not proposing a complete delisting, rather they propose downlisting to “threatened” because of diseases, particularly bovine brucellosis and bovine tuberculosis. Nevertheless, there are seven free-ranging, disease-free herds with a total of more than 4,000 animals in those herds in Canada. Interestingly, that is said to be more than the number of free-ranging plains bison (smaller body size and different appearance than wood bison, which can be 2,000 pounds, six feet tall and 12.5 feet long) in the United States. They have been brought back from near extinction by the Canadian program - that is truly remarkable. All the while, the USF&WS has done noth-

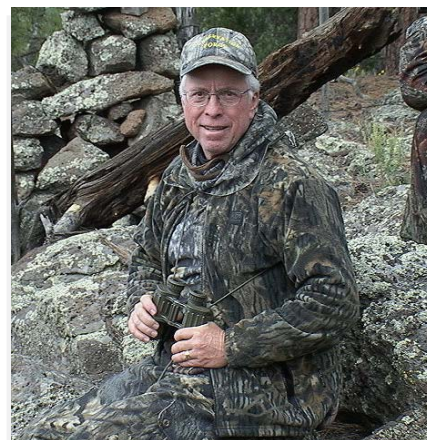
ing to restore free-ranging wood bison in the United States. There are no free-ranging wood bison in the US according to the USF&WS news release. The Canadians have long let it be known that the US listing is obstructing its conservation strategy.

The history of wood bison recovery is notable. In 1922, Canada created what may be the largest national park in the world, the Wood Buffalo National Park (WBNP). It was set aside for the protection of the last wood bison. There were so few wood bison that thousands of plains bison were brought in, leaving no pure-bred wood bison. In 1959, an isolated northern population of pure-bred animals was found in the Park. Thirty-seven of those were captured and translocated to other locations in the recovery efforts. By 2000, there were 2,800 in six locations where they had been translocated. Today there are more than 4,400 free-ranging, pure-bred, disease-free wood bison in seven herd locations. Those herds are growing at 20 percent per annum, and all originate from the original 37 from the Park. Now the USF&WS has made the positive finding that “Because of recovery efforts, the wood bison is no longer in danger of extinction. Therefore, it is no longer appropriate the species be listed as endangered.”

In 1988 Canada reclassified its wood bison from endangered to threatened in Canada. In the 1990s, CITES downlisted the wood bison in Canada, and by 1999 the Wood Bison Recovery Team considered the Yukon population recovered. In 1999, the Yukon authorities began granting tourist hunting permits to create revenue and incentives for the local First Nation people as part of the long-term recov-

ery and survival strategy. In 2000, Tim Mervyn of the Yukon Outfitters Association was able to acquire permits to auction at what was then the Foundation for North American Wild Sheep (FNAWS). FNAWS called upon its partner, Conservation Force, to attempt importation of the trophies into the United States, thus Conservation Force’s *Wood Bison Initiative* was born. We were ready because we had been working on its conservation since downlisting by CITES. The *Initiative* was our usual two-barrel approach, both downlisting and enhancement permitting. Both were promised by the Clinton, then the George W. Bush Administrations, but the permits went unprocessed, and the promised FWS-initiated downlisting never transpired. Finally, we prevailed upon the Canadians to file their own downlisting petition after waiting over half a decade for the USF&WS to do it on their own, as they promised Conservation Force and the Canadians. Filed in 2007, that too went unprocessed until we stopped believing broken promises as the Bush Administration came to a close.

Conservation Force and some of its allied organizations, including FNAWS (now called Wild Sheep Foundation and the one that began it all), have filed two suits to date to get us where we are. The first suit was to compel the 90-day downlisting finding and the processing of the import permit applications languishing since 2000. The USF&WS finally processed the permits. Despite positive findings by the Division of Scientific Authority and the Division of Management Authority, a political policy decision from above by the current Administration overrode science. The permits were



JOHN J. JACKSON, III
Conservation Force



“SERVING THE HUNTER WHO TRAVELS”

World Conservation Force Bulletin

Editor/Writer

John J. Jackson, III

Publisher

Barbara Crown

Copyright 2008© by Dagga Boy Enterprises Inc. ISSN 1052-4746. This bulletin on hunting-related conservation matters is published periodically free of charge for subscribers to *The Hunting Report*, 12182 SW 128 Street, Miami, FL 33186. All material contained herein is provided by famed wildlife and hunting attorney John J. Jackson, III with whom *The Hunting Report* has formed a strategic alliance. The purpose of the alliance is to educate the hunting community as well as proadvocacy of hunting rights opportunities. More broadly, the alliance will also seek to open up new hunting opportunities worldwide and ward off attacks on currently available opportunities. For more information on Conservation Force and/or the services available through Jackson’s alliance with *The Hunting Report*, write:

Conservation Force
3240 S I-10 W Serv Road
Metairie, LA 70001

Tel. 504-837-1233. Fax 504-837-1145.
www.ConservationForce.org

For reprints of this bulletin or permission to reproduce it and to inquire about other publishing-related matters, write:

The Hunting Report
12182 SW 128 Street
Miami, FL 33186.
Tel. 305-670-1361. Fax 305-670-1376.

SUPPORT OUR CORPORATE SPONSORS

FAUNA & FLORA

<http://www.faunaandflora.com/>



<http://www.hornady.com/>



<http://www.globalrescue.com/index.cfm>

denied in complete contradiction to the findings in the record. The enhancement provision in the ESA and its very express implementing regulations remain dormant because political concerns override the conservation of the species. In the interval, some of us at Conservation Force have wasted

the best part of our adult lives chasing recovery dreams and waiting on promises.

The second suit, *Wood Bison II*, still ongoing, was to challenge the permit denials and compel a 12-month finding and five-year review of the listing. In the interval, the court in *Wood Bi-*

son I denied attorney fees because permit processing deadlines are not mandatory under the ESA and the USF&WS had acted before an actual formal order had been issued. That is on appeal. The lesson is clear: The hunting community should not have waited 10 years to sue.

Briefly Noted

Lead Issue Taken to Court: We previously reported on the Center for Biological Diversity’s (CBD) co-authored petition to the Environmental Protection Agency (EPA) to ban all lead used in shooting and angling. The EPA denied the request for ammunition because of an express exclusion excepting bullets in the underlying statute. It later denied the petition for fishing uses on the basis that its use in fishing did not warrant a ban. The suit that was expected has now been filed.

The suit is entitled *Center for Biological Diversity, Public Employees for Environmental Responsibility and Project Gutpile v. Lisa Jackson, Administrator, Environmental Protection Agency and Environmental Protection Agency*, filed in US District Court for the District of Columbia (case number 1:10-cv-02007-EGS filed on November 13, 2010). The suit asks the court to “order the EPA to initiate the petitioned action, namely to develop and implement regulations to prevent poisoning of wildlife by spent lead shot, bullets and lead-containing fishing tackle.”

There are several interesting aspects of note in the suit. The CBD claims to have had a “Get the Lead Out” campaign since 2004. Project Gutpile claims to be an “educational organization comprised of hunters” since 2002. The CBD alleges that the exemption for ammunition is limited specifically to “shells and cartridges” that are subject to excise taxes by the IRS, which has ruled since 1968 that the excise tax “does not apply to sales of separate parts of ammunition such as cartridge cases, primers, bullets, and powder.” The suit quotes Congressional language that raises that issue:

Although the language of the bill is clear on its face as to the exemption for pistols, revolvers, firearms, shells, and cartridges, the Committee wishes to emphasize that it does not intend that the legislation be used as a vehicle for gun control. Consequently the Administration has no authority to regulate ammunition as an unreasonable risk because it injures people when fired from a gun. However, the Committee does not exclude from regulation under the bill chemical components of ammunition which could be hazardous because of their chemical properties.

This is the hook the CBD attorneys are relying upon for the ammunition part of the suit. The exemption may not cover any bullet component that is not excise taxed. Of course, the ban



of that part not taxed will affect the sale of the related parts and thus excise tax revenue and the conservation it pays for. The excise tax produces approximately one-quarter of US conservation revenue, and license fees produce the balance. The suit is not for a ban as such, but for regulation. Contradictorily, the suit points out that the EPA has customarily ordered total bans for toxic substances, so the petition was a petition for a ban.

The petition and now the suit are broader than represented for fishing tackle. Although the initial petition that was denied and the suit captions

suggest it is only a requested ban on fishing weights, it is in fact a petitioned request on all lead in all tackle or fishing items, not just weights.

Of course, lead has a better ballistic coefficient for bullets than other substances, and other substances present dangers of their own, such as the risk of going through and beyond the intended target as well as ricochets. Also, the market cost of alternatives, such as copper, has become almost prohibitive.

A copy of the 14-page suit can be found on Conservation Force’s website under News & Alerts as *CBD Suit to Ban Lead*.



Both Markhor Cases Moving Forward: Much like the wood bison, two suits were filed in the parallel Markhor Initiative after 10 years of broken promises that it would be downlisted and the trophies would be permitted for importation. The difference is the markhor downlisting was filed in 2000, and the USF&WS has raised the defense that its 2001 positive 90-day finding and promises did not interrupt the six-year litigation deadline for civil suits.

The US Supreme Court recently appointed a new federal judge from another district court to hear the cases that have not really moved in two years. In February, the new judge ordered a joint report from Conservation Force and the government on the status of the two markhor cases. The cases are now expected to go forward.

Conservation Force and the other plaintiffs have filed a second petition to downlist the Suleiman markhor of the Torghar Project. We did this after more than a year of waiting on a deci-

sion by the previous judge on whether or not we can enforce the first downlisting petition. The USF&WS has defaulted on its obligation to make a 90-day finding on the 2010 downlisting petition and we have sent a notice of intent to sue but have not yet filed that suit. The USF&WS has responded that it can't find the time and resources to timely process the new downlisting petition, i.e. make a 90-day determination until this Spring, if then. It literally states it is too busy listing other Canadian species!

In the meantime, Conservation Force, Osprey Filming Company and Hunter Proud have completed a DVD that is being distributed by partners Wild Sheep Foundation and Grand Slam Club/OVIS. The DVD documentary on the Torghar Project tells the whole remarkable story of the recovery of that distinct population and the underlying hunting base. These straight-horned, Suleiman markhor should not be confused with the Astor and Kashmir markhor that are both already importable as a result of Conservation Force's successful *Other Markhor* initiative.

Although we don't yet have the administrative record in *Markhor I* or *II*, we have completed a thorough review of all Federal Register Notices, delisting status and prioritization of listing and delisting schedules published by the USF&WS. Other than making a positive 90-day finding more than 10 years ago, the Agency has never included the Suleiman markhor downlisting petition in its scheduling planning and budgeting! This was a shocking revelation. The new petition to downlist is to be processed, and we are here to ensure that it is processed. *Markhor III* is being drafted as this is being written. We also are not abandoning the first petition. It will be pursued to the Supreme Court if necessary.

□

Zambia Initiative Success: The USF&WS confirms its promise to finally permit import of Zambia elephant trophies. Conservation Force is preparing permit applications for the first US applicants in years.

Following the adoption of a new

management plan in 2004, Zambia submitted to the USF&WS the most thorough documentation for approval for import of its elephant trophies ever submitted. The USF&WS did not respond for more than a year. When it did, it replied that it could not find the hunting of up to 20 elephant in the three areas proposed non-detrimental, and it sent some questions for clarification. Zambia officials again responded in a month but to no avail. It was more than a year before the USF&WS unskillfully responded. This has gone on for six years.

We began the *Zambia Initiative* in 2005 by filing import permit applications, FOIA requests and all that we do – all to no avail. In 2009 the USF&WS started repeating the same questions again that had long since been asked and answered. They represented that they had never received a response to their questions. Throughout the pro-



cess the applicants were kept out of the information loop. We sent notice and filed suit for the applications that had been languishing for five years. The suit is ongoing. We also helped initiate and fund a CITES downlisting petition for importation of the trophies. This included a DVD circulated to all CITES Parties produced by Osprey Filming Company, Conservation Force and Hunter Proud entitled *Tembo: Use or Lose: The Case for Downlisting the African Elephant from CITES Appendix I to Appendix II in Tanzania and Zambia*. The CITES downlisting proposal failed to get the necessary two-thirds vote by only a few votes. To everyone's surprise the USF&WS made a Plenary intervention in favor of the downlisting and on the side said it was

then probably willing to grant import permits.

Contradictorily, the USF&WS actually denied all outstanding import applications on the eve of that same CITES CoP last March. When Conservation Force filed for reconsideration of the 2005 and 2006 applicants the Agency again said it would not approve prior applications but probably would approve future applications. No one applied for an import permit during the 2010 season. USF&WS repeated its change of heart to the Zambia authorities during the African Forum that SCI largely underwrites in early November. Again at SCI's Convention in late January the USF&WS delivered a letter to the Zambia authorities present that they are ready to issue elephant trophy import permits on a year-by-year basis on the condition it is specified how the revenue is being spent.

Further FOIA inquiry on our part demonstrated that the Division of Scientific Authority and the Division of Management Authority have not yet made positive findings but that is because no applications had yet been submitted to enter into those processes. We are preparing applications now and don't expect any delay or trouble. We are also continuing with the suit to import those trophies already taken by those that have paved the way for others through their conservation hunts in the three communal areas the elephant quota of 20 are allowed to be taken.

It qualifies as “conservation hunting” in every sense of that phrase. Half of the revenue goes to the local community to reduce poaching and increase tolerance in the face of building conflict as the elephant population continues to grow. The job is not done, but all the work is paying off. In our most sincere view, import permits should have been approved in 2004. International Affairs of USF&WS does not have the resources, skill or level of care to be making the *ultra vires* determinations it has imposed upon itself to make. It is not a secret anymore. It is decades-long abuse of hunters, foreign authorities and foreign programs. – *John J. Jackson, III.*