



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 November 2013

## US Supreme Court Denies Polar Bear Writ

On October 7, 2013, the US Supreme Court denied the petition for writ of certiorari in the consolidated cases challenging the polar bear "threatened" listing. This is the end of all the polar bear cases. Nothing more can be done in the courts. It is over. The "threatened" listing on the Endangered Species Act is, for all practical purposes, forever. There is no way to change it in our lifetimes.

I can't help but express that I have been affected by the listing (May 2008), the long fight before the listing and the loss of all the cases in all the courts. I am not a disinterested lawyer who at least has been paid for services. Yours truly and Conservation Force, like most of the hunting community, are stakeholders who suffer with the bear. I have been a self-appointed champion of the polar bear, the Canadian and Inuit management system and the great people of the Arctic North for nearly two decades. Long before that, I chaired the whole polar bear *Initiative* that reformed the Marine Mammal Protection Act to permit import of polar bear trophies. This is a personal loss. It breaks my heart to see polar bears, the conservation programs that support them, and the people who depend on the species all sacrificed over climate change politics.

The net harm of the listing is our first concern. The ESA does not provide benefits for foreign listed species, but it most certainly can, and has in this instance, obstructed a successful range nation program. At the least, the bear was listed



DATELINE:  
**North America**



John J. Jackson III

prematurely and the entire population should not have been included in the listing, most particularly the distinct management units that are improving and expected to further improve. Over the past decade, more management units have increased in bear numbers than decreased, and the increase far exceeds the nominal decline. The USFWS has listed the polar bear over Canada and Nunavut's objections and now complains at CITES that the native

people have shifted to less lucrative commercial trade in skins. In fact, the ESA is the threat. The negative effect is direct, immediate and certain.

The courts have clearly favored the listing agency, USFWS, throughout the litigation. The District Court even gave the USFWS an opportunity to change its definition of "endangered" to save the Final Listing Rule rather than overturn the listing. The Appellate Court also let the Service slip by with its statement in the Final Listing Rule that the Canadian conservation program was "not a factor

to be taken into account." The Court did this late in the case when it fished out some language of the USFWS stating that it had nevertheless taken into account the benefits of the Canadian conservation program. In our motion for rehearing we pointed out there was no record of that claimed "taking into account" analyses of Canada's program for the Court to review or judge it by. We also raised the importance that rationally-based listings not have a negative net impact on a species. The Appellate Court did not grant the motion for rehearing on that or any issue. In a sense it is good that the Appellate Court did not wholly reject our argument that the USFWS must "take into account" the foreign program. The finish of that fight is left to another day. Nevertheless, both the listing and the courts' decisions are bad precedents. It is all foreboding.

We thank those hardy souls that Conservation Force has represented as named plaintiffs in the listing challenge. They are: African Safari Club of Florida, Ameri-Can Expeditions, Arviat Hunters and Trappers Organization, Mark Beeler, Canada North Outfitting, Dallas Safari Club, Timothy Decker, Chris Hanks, Henik Lake Adventures, Don Hershey, Steve Hornady, Houston Safari Club, Inuvialuit Game Council, William

Keene, Ron Kreider, Allyn Ladd, Ethel Leedy, Everett Madson, Nanuk Outfitting, Aaron Neilson, Louie Nigiyok (ArcticHillsTours), Major Roger Oerter, Bradley Pritz, Kevin Reid, Robert Remillard, Resolute Bay Hunters and Trappers Organization, Jeff Sevor, Steve Smith, Ted Stallings, Larry Steiner, Darwin J. Vander Esch, Joseph Verni (Natura Sport), Tim Walters and Webb Outfitting Nunavut. ■



## Court Should Hold Feds Accountable for Questionable ESA Listing

*Editor's Note: Over the years, you have heard from me on many of the issues affected by the listing of polar bear to the Endangered Species Act (ESA). Here, I share with you a description of some salient issues identified by fellow attorney Reed Hopper, the most notable of which is the need for transparency and accountability by our government decision makers. This was written before the Supreme Court denied our petition, but Hopper's points are no less valid.*

Asking tough questions of government officials is often unpopular these days. Whether the subject is domestic spying, global warming, the war on terror, or agency abuse of power, questioning decision-makers has come to be viewed by many as unseemly or even downright unpatriotic.

But we should never allow "accountability" to become a bad word. Accountability is essential to protect us from arbitrary governmental actions, provide transparency, and ensure trust in public institutions.

And the best way to hold officials accountable is to ask questions. Hard questions. Even unpopular questions.

Accountability is the goal of a lawsuit that the US Supreme Court has been asked to take up — challenging the federal government's decision to list the polar bear as a threatened species under the Endangered Species Act.

Polar bears are a beautiful and iconic species, revered worldwide. This very fact is no doubt the reason why the US Fish and Wildlife Service flouted the law in listing the species in the first place.

Under the ESA, an animal may be designated as "threatened" only if it is on the brink of extinction in the foreseeable future. Yet we know the following about the polar bear:

- Polar bear populations are not declining overall; in fact, there are more polar bears today — as many as 25,000 — than any time in recorded history.
- Polar bears continue to utilize their historic geographical range, one of the largest habitats in the world.
- Polar bears do not face any sudden or calamitous threat.

- Polar bears are not rare, or on the brink of extinction, or critically imperiled.
- Any changes in polar bear populations are likely to be gradual over many years, and no long-term projections can be made with certainty.
- Fourteen of the world's 19 polar bear populations are stable, increasing, or yet to be determined.
- And ironically, according to the US Secretary of the Interior, the listing will provide no protections against what the agency contends is the primary threat to polar bears — melting sea ice.

Some may question this data, but the government does not. These are the facts as recited by the Fish and Wildlife Service in defending its decision to list polar bears as a threatened species. But the agency has never expressly answered the hard question: How do these facts support an ESA listing when they demonstrate that the species is actually thriving?

Holding the agency accountable — demanding answers about its decision-making — is doubly important in this case, because the polar bear listing is a first. Never before has a healthy species been added to the Endangered Species Act's "threatened" list.

Instead of demonstrating an actual decline in polar bear numbers, regulators hypothesized about future global warming trends and changes in habitat that might — or might not — happen, decades in the future.

This approach — substituting conjecture for concrete facts — could vastly expand governmental power and contract individual freedom. If species can be added to the ESA list even though they aren't currently threatened, based on speculative projections about the distant future, there could be no limit to the number of new listings. There are tens of thousands of species on earth, and almost all face some future risks. This is significant because listing a species gives the federal government virtually complete regulatory control over species habitat on both public and private property. These habitats can



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**EDITOR/WRITER**  
John J. Jackson, III

**PUBLISHER**  
Barbara Crown

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Conservation Force  
3240 South I-10 Service Road West, Suite 200  
Metairie, LA 70001  
Tel. 504-837-1233 Fax 504-837-1145  
[www.ConservationForce.org](http://www.ConservationForce.org)

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cover thousands of square miles, as with the polar bear, resulting in restrictions on land use that affect jobs, energy, housing, transportation, and food production.

Already the polar bear listing has triggered environmentalist challenges to oil and gas exploration in Alaska's Chukchi and Beaufort Seas. Lawsuits in the Lower 48 could follow. Activists could challenge industrial activity on the grounds that the ESA listing says polar bears might be harmed — at some point in the future — because of carbon dioxide emissions.

Federal officials may be able to articulate a proper basis for listing the polar bear, but they have not done so yet; instead, they offer only admittedly uncertain judgments about what might transpire many years from now.

Unfortunately, the lower courts

have given a pass to the listing, and allowed the feds to start practicing "regulation by speculation."

If there's going to be accountability for this new approach to ESA policy-making, the Supreme Court will have to provide it. The court should step in and demand that officials justify their questionable listing decision and the

precedent it sets for a dramatic expansion in federal regulatory power.

*Reed Hopper is a principal attorney with the Pacific Legal Foundation ([www.pacificlegal.org](http://www.pacificlegal.org)) and represents the Congress of Racial Equality in challenging the listing decision, along with Safari Club International and Conservation Force. ■*



## Succession and Development: "What will We Do When You are Gone?"

**W**e have been asked this question for years by hundreds of people and organizations in the hunting and conservation world. The people who ask the question are sincere. The concern is real and is justified.

We share the concern and have been searching for the solution. Though we work at a fever pace, we have learned the work will never be done. Trust me; the work must continue after we are gone.

We have fashioned a solution as part of Conservation Force's short- and long-term plans, five and 10-plus years, respectively. The plans are evolving, but Conservation Force's succession and development is being treated as the **priority**. There is just too much dependent upon my health and decades of volunteer services. There is no substitute for my expertise, which comes into play every day. The plan is to carefully select, hire, train and test qualified staff to follow in our steps. Their expertise will have to be in different, multiple specialties such as international wildlife treaties, laws and regulations, wildlife management and both the hunting and scientific communities. The sooner select, paid staff can be hired, trained on the job and put to the test, the better. The work

is not for everybody, and we will not accept half-hearted people without a true devotion to the industry and a real work ethic.

The selection of qualified people and transfer of esoteric expertise will be challenging, so we intend to start right away. If we start now, there should be time to get it right. The need has been confirmed and a course of action has been established. The one, most important need is funding, which is essential. Periodic cash flow will help. A capital campaign like our Endowment Fund can help too. What is really needed is a legacy gift program targeting gifts of real property, stocks and bonds. Most wealth is held in real property. That is the well we have to tap to transfer the expertise and carry Conservation Force forward.

This is our first announcement of Conservation Force's *Legacy Gift* program calling for gifts of real estate, stocks and bonds. The gift of real estate can be immediate and in full (fee simple) or it can be after life, as in a will. It can be with the right to use reserved until one's death. For success, the sooner the better. We have significant supporters die every year and have to tend to this before we do too.

We will do all that we can to develop and provide for the succession

of Conservation Force, but ultimately those that can, need to step up and provide the funding. The amount needed will most likely have to come from legacies and property donations.

**First Legacy Donation:** Chrissie and I have made the first legacy donation by bequeathing our home in our wills with a provision that the surviving spouse has the right of full use and occupancy until his or her death. This will certainly help, but it will come too late and be too little. Not only do we expect to live long, the search for champions and transfer of expertise needs to start now and needs to be complete before my own bequest can add to the funding. Funding after my death is really too late.

We have done and continue to do all that we can. Now it is up to you out there. You and you alone can make the difference. We have given all that we can and all that we have. Won't you help? Conservation Force is a 501(c)(3) public charity. Help us carry on and pass it on.

If interested in making the gift of property or a legacy donation, please contact John J. Jackson at Conservation Force, PO Box 278, Metairie, LA 70004-0278, [jjw-no@att.net](mailto:jjw-no@att.net).

If you do put us in your will, please let us know. Send a copy. ■



# Black Rhino Auction: A Dream Come True

This coming January during its Grand Gala Saturday Night Dinner Auction, Dallas Safari Club will auction off a special black rhino hunting permit for Mangetti National Park, Namibia. This is a cabinet-level decision by Namibia. The cabinet has approved the recommendation by the Ministry of Environment and Tourism.

This is to be the ultimate conservation auction and conservation hunt. **ALL** proceeds (100 percent) are to go directly from Conservation Force (the 501(c)(3) public, charitable conduit) to Namibia's Trust Fund for rhino conservation. There are to be no fees, commissions or charges by DSC, the auctioneers or Conservation Force whatsoever. Conservation Force is to provide free legal services to obtain the USFWS import permit and will hold the funds in its trust account until the ESA import permit is issued. The full price is to be refunded to the high auction bidder if the USFWS import permit is not issued for some unforeseen reason.

Conservation Force has orchestrated this special auction from its inception with the cooperation of the USFWS and Namibian authorities and, of course, its

partner and important supporter, Dallas Safari Club.

This conservation auction can go a long way toward insuring the survival of the endangered listed black rhino. Namibia's successful black rhino plan speaks for itself. We hope this will be a record-breaking auction that will boost the program and secure the rhino even further. The hunter who purchases this permit can really make a difference in black rhino survival.

The Parties of CITES (177 nations) have supported the issuance of this permit by expressly passing a resolution for a small hunting/trade quota. The major NGOs, like the IUCN and WWF, have supported the quota. The Rhino Specialist Group, made up of the foremost rhino scientists in the world, encourages the limited quota to generate operating and anti-poaching revenue for the conservation of the rhino and to incentivize and reward the local people who will ultimately determine the fate of the rhino. Now Dallas Safari Club, Namibia and USFWS have collaborated in a way to maximize revenue essential to carry on the successful program. This

is a dream come true for those who care, and I mean really care about this great animal. It is a dream come true for Conservation Force and the conservation leaders who have envisioned this since the early 1990s when Namibian MET Minister Nico Bessinger first asked us for help.

The rhino offered for this hunt will be a surplus, post-reproduction male taken in a fair chase hunt. The removal of the bull is a biological benefit to the population, according to the Rhino Specialist Group of IUCN and management experts. Surplus old bulls commonly wound and kill cows, calves and younger breeding bulls, particularly where captured and translocated. Their removal increases the population growth rate. Generating revenue from their removal is even better.

Serious bidders are welcome to call or email me with inquiries about this historic auction and hunt. I encourage you to come witness this historic moment in the hunting and conservation world. Better, come bid. ■



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