



SPECIAL SUPPLEMENT

"Hunting provides the principal incentive and revenue for conservation.  
Hence it is a force for conservation."

# World Conservation Force Bulletin

conservationforce.org July 2011

## USFWS Makes Positive Markhor Finding

On June 2, 2011, the US Fish & Wildlife Service (USF&WS) published in the Federal Register a 90-day finding on the petition to reclassify the Torghar Hills population of straight-horned markhor, or Suleiman markhor (*Capra falconeri jerdoni* or *C.f. megaceros*), from endangered to threatened under the US Endangered Species Act.

In the Federal Register Notice, 76 FR 31903 (June 2, 2011), and in its cover letter to interested parties, the USF&WS credits the petitioners:

*This 90-day finding is in response to a petition from John Jackson of Conservation Force dated August 17, 2010, submitted on behalf of Dallas Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/Ovis, Wild Sheep Foundation, Jerry Brenner, Steve Hornady, Alan Sackman and Barbara Lee Sackman, requesting we downlist the Torghar Hills population of the Suleiman markhor, in the Balochistan Province of Pakistan, from endangered to threatened under the Act. A copy of this 90-day finding is attached and can also be found on our website at <http://www.fws.gov/policy/library/2011/2011-13671.pdf> or <http://www.regulations.gov>.*

Readers can also find the cover letter and Notice on Conservation Force's website at <http://www.conservationforce.org/news.html>. The Federal Register Notice indicates that it is a review of the "entire subspecies," not just those in the Torghar Hills. The Notice states that "the straight-horned markhor and the Kabul markhor were considered by many authorities to be the single subspecies *C.f. megaceros* (straight-horned markhor). These subspecies currently remain listed as sepa-



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John J. Jackson III

rate entities under the Act (ESA). We are requesting information...on the taxonomy of both subspecies to determine if these constitute a single subspecies." Clearly the Agency intends to explore and calls for comments on the "[G]enetics and taxonomy of *Capra falconeri jerdoni* and *C.f. megaceros* to determine if these two subspecies constitute a single subspecies."

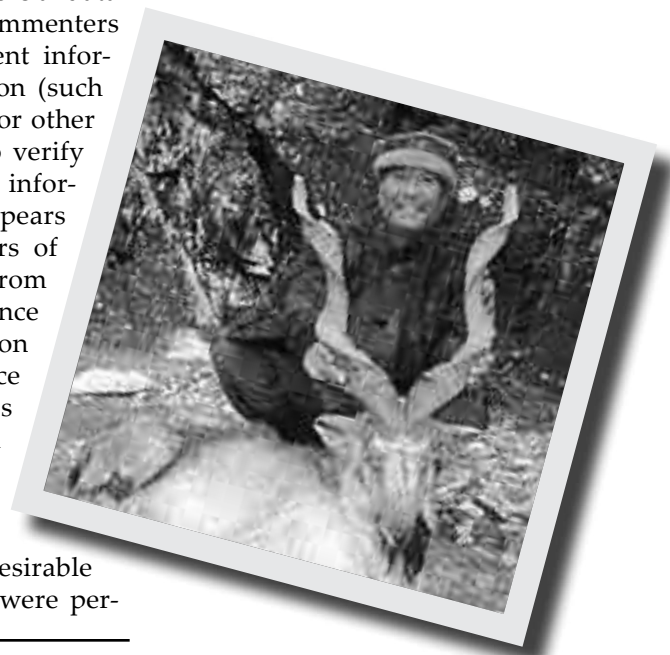
Some information in the 90-day finding is useful to know for all purposes. The Agency notice insightfully points out the treatment of comments. "Please note that

comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as...the Act directs that determinations as to whether any species is an endangered or threatened species must be made 'solely on the basis of the best scientific and commercial data available.'" It also asks commenters to "[p]lease include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include." This appears to discourage sign-on letters of opinion but not comments from those with first-hand experience and particular documentation supporting that experience and viewpoint. Examples might be contributions paid above the price of the hunt, documentation of the willingness to pay more for an importable trophy and desirable conservation practices that were per-

sonally witnessed.

The Notice defines the differences between the 90-day finding and the 12-month finding that has been put out for comment. "It is important to note that the 'substantial information' standard for a 90-day finding is in contrast to the Act's 'best scientific and commercial data' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough review of the status of the species..." i.e. the 12-month determination. The comment period for that status determination is open now and will end August 1, 2011.

The Notice describes previous federal actions. On March 4, 1999, the Agency received a petition from Sardar Naseer A. Tareen on behalf of the Society for Torghar Environmental Protection and the IUCN's Central Asia Sustainable Use Specialist Group to reclassify the Suleiman markhor in the Torghar Hills region of the Baloch-



istan Province, Pakistan, from endangered to threatened. On September 23, 1999 (64 FR 51499), the Agency published a positive 90-day finding and opened a comment period that closed on January 21, 2000. To quote the Notice, "A 12-month finding was never completed." Conservation Force's review of all published listing/de-listing schedules has revealed that the Agency never scheduled the completion of a 12-month finding on that petition, so it was never to be done despite representations to the conservation authorities and experts concerned. Though the Agency has yet to produce the Administrative Record on that petition in two lawsuits filed by Conservation Force, it claims that more than six years have passed so there is no enforceable right of action to legally compel that otherwise mandatory 12-month determination. That unresolved legal issue has stalled the first markhor lawsuit filed by Conservation Force on behalf of itself who filed the petition and others. That is why Conservation Force and other organizations and recent import permit applicants filed the second petition to reclassify that population of markhor approximately 10 months ago. Though it has taken 11 years to get back to the 90-day finding stage of 2000, the markhor's status and the worldwide recognition of the underlying, hunting-based program has continued to improve. Today the markhor is positioned for reclassification even better than it was when the first petition was filed in 1999.

The USF&WS recognized that "[t]his population now represents the highest concentration of markhor in the world...and may represent one of the last remaining strongholds for the subspecies...(and) the most important population for the subspecies' survival." It also recognized that the "most likely cause of this population growth is the virtual complete cessation of poaching in the Torghar area accomplished by the TCP."

The Torghar Hills population of straight-horned markhor is protected by a private conservation program, the Torghar Conservation Project (TCP). In 1986, the TCP was instituted and run informally by the local Tribal ruling family. The goals of the TCP were to conserve local popu-

lations of the Suleiman markhor and the Afghan urial (*Ovis orientalis cycloceros*) and improve the economic condition of local tribesmen. To accomplish this, the local tribesmen refrain from hunting in exchange for employment as salaried game guards to prevent poaching in the Torghar Hills and assist in wildlife surveys. Game guard salaries and other costs of the TCP are covered by fees paid by foreign hunters to hunt a small, controlled number of markhor and urial for trophy. In 1994, an officially registered nongovernmental organization, the Society for Torghar Environmental Protection (STEP), was formed to administer the TCP.... Since the TCP was instituted in 1986, the markhor population in the Torghar Hills has been growing steadily from the brink of extinction to a thriving population and is considered "viable" for both population and genetic processes. Based on the substantial population growth, researchers have concluded that the markhor have responded well to the management and protection provided by the TCP and the program has been a successful tool in conserving the markhor of the Torghar Hills.

The Notice cites facts from Conservation Force's petition that were amply supported with documents and exhibits.

In the early 1980s the markhor population in the Torghar Hills was thought to be at very low levels, perhaps fewer than 100 individuals.... Since the TCP was established and poaching essentially eliminated, the population of markhor in the Torghar Hills has increased. In 1994, Johnson (1997, pg. 12) estimated the Torghar Hills population of markhor to be 695. Later surveys estimated the population to be 1,298 in 1997; 1,684 in 1999;



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EDITOR/WRITER  
John J. Jackson, III

PUBLISHER  
Barbara Crown

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Conservation Force  
3240 S I-10 W Serv Road  
Metairie, LA 70001  
Tel. 504-837-1233 Fax 504-837-1145  
[www.ConservationForce.org](http://www.ConservationForce.org)

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2,541 in 2005; and 3,158 in 2008 (Frisina, et al. 1997, p.6; Arshad and Khan 2009, p.9)... [T]he laws of Pakistan, regulations on hunting imposed by the TCP, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) quota and nondetriment determination are more than adequate to protect the straight-horned markhor.... [T]he listing as an endangered species under the Act prevents hunters from bringing trophies home to the United States, creates a disincentive for American hunt-

ers to participate in the TCP, and reduces the number of hunts and keeps the price of hunting permits artificially low.

It has been a long road since the first petition in 1999. It has taken two petitions, at least three notices of intent to sue, two suits which are both still open and a third suit prepared but not filed. This is definitely a broken system. We expect it may take two more Notices and two more suits for the 12- and 24-month rules.

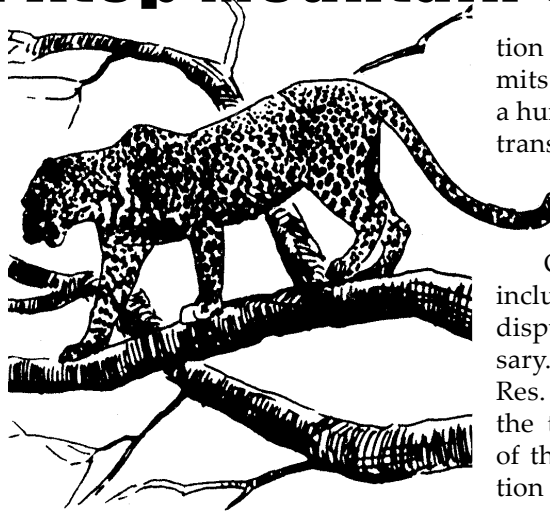
Hopefully the Agency will make

the 12-month finding (positive or negative) shortly after the comment period ends on August 1. On August 17 the mandatory date to make a determination within 12 months will be exceeded. Then we will serve still another 60-day notice of intent to sue and follow up with suit if and only if necessary. Unfortunately, the conservation program and champions of the markhor, the local people, have been deprived of millions of dollars in revenue while the two petitions languished. ■

## New Eruption Atop Mountain of Seizures

In late May some USF&WS Inspectors began seizing leopard trophies that had tags showing the quota number of the leopard but did not also include the total quota for the country. For example, the tag had "86" (the number of that animal) but not "86/250" or "86 of 250" or "86-250." A number of very responsible countries don't put both numbers on tags because of the space it takes, its irrelevance to the identification of the particular animal and the fact that the country quota is an indisputable number on public record. The total country quota is set by the 177 Parties at CITES Conferences of the Parties. The figure is posted by the Secretary General of CITES on the CITES website and is posted on the USF&WS website. The quotas for leopard hunting trophies and skins for personal use are set forth in CITES Resolution 10.14 (Revised). Its inclusion on the tiny tags is perfunctory.

The first trophies seized were from Mozambique. Had we not been alert and had *The Hunting Report* not issued



an E-mail Extra Bulletin warning the hunting community, it would have been worse. Shipments were stopped across the globe while we contended with the problem here in the US and with CITES everywhere. With the help of import agent John Meehan at Fauna & Flora, the International section of USF&WS Law Enforcement has released the trophies and shipments are again taking place. Importers and exporters need to verify the expira-

tion dates of import and export permits to see if they must be renewed. If a hunter's trophy was held up at some transit point, the owner/hunter must establish if a re-export permit is needed.

One could certainly claim that the inclusion of the total number of the undisputed, fixed, total quota is unnecessary. The related CITES Resolution, Res. Conf. 10.14 (Revised), states that the tag should contain "the number of the specimen (okay so far) in relation to the annual quota...." The U.S. regulation, 50 CFR 23.74, states the same thing as that CITES Resolution/Recommendation. The catchphrase is "in relation to the annual quota," not the annual quota itself. This blip was a new requirement without any warning and contrary to the longstanding practices of many countries. What are the inspectors doing and why are their supervisors and the Chief of Law Enforcement tolerating this war on innocent and foreign programs? ■

## USFWS Enforces Validation Requirement On CITES Permits

Validation is the completion of the bottom section on CITES export permits where there are blocks for an inventory of the parts in the shipment, the government seal, signature and date. The seal, signature and date are separate from that for the issuance of the permit. One might state the permit is not complete until the validation part is completed at the time of export.

A designated CITES Authority must seal, sign and date this part of the form. Of course, this takes place at the time of export, which can be months after the export permit is acquired.

Just a few years back, many countries did not do this, particularly for CITES hunting trophies. Some countries did not even have a section on their CITES export permits.

The practice of many countries was to complete the validation section for commercial traded items but not for hunting trophies. Export permits for large commercial shipments may contain hundreds of skins or parts and consequently may contain a quantity above that on the face authorization unless an inventory is completed and signed-off. This is normally not the situation with hunting trophies (a



skull and a skin) though in one seizure we know of, an elephant skin was cut up into many parts and was thought to exceed those of the intended elephant.

The 2007 U.S. CITES regulations you have heard so much about include a mandatory requirement that import permits be validated. Some countries did not even have it on their export forms and others did not make

it a practice to complete for hunting trophies. The Director of USF&WS and the Chief of its Law Enforcement Division issued an Order that the regulation be phased in. That phasing in was extended several times. From the start, some countries, like Zimbabwe, had to add it to their export permit forms. Trophy shipments were held up in such instances. In a number of instances trophies were detained or seized but ultimately returned to the hunter. On the other hand, trophies were not returned if the import permit had expired during the delay, which was a second violation.

The leniency period has now passed. From San Francisco to New York export permits are being treated as invalid if the validation section is not completed in every detail. It does not matter if the parts are only two or a few and perfectly match the face of the permit. Law Enforcement port inspectors are not just seizing excess parts but all parts, even though the validation would have only been perfunctory, i.e. one skin and one skull and no excess part above that on the face. Trophies are being seized and forfeited regardless of the innocence of the owner, the value of the trophy or mitigating circumstances, and

without any questions being raised about the underlying lawfulness of the hunt.

It is now imperative that exporters secure the validation before shipment. The exporters are the professional export brokers, taxidermists and hunting operators who present the trophy to the authorities before delivery to the shipping carrier (airline).

Trophies have been forfeited because the export broker presented it to Customs for clearance without pointing out the shipment contained a CITES listed species, without separately presenting the export permit to the Customs official and without examining the permit to make sure Customs completed the validation. Other trophies have been seized because the form did not even have a validation space on its face.

Believe me, everyone must know this and see that it is done or your CITES listed trophy will be at risk. At least one person has lost over \$100,000 in trophies. ■

## Pakistan Export Permits Don't Have a Validation Section

It has just been discovered that Pakistan's CITES export permit does not have a validation section or even space on its face for inclusion. Markhor have been imported from Pakistan for several years without incident but now that the US validation requirement is being enforced, markhor, one of the most costly trophies in the world, have been detained and are being seized.

One of the most celebrated and important conservation strategies in the world is in question for the time being until the section is added to their export permit form and until everyone in Pakistan is educated about what it is and how it is to be complet-

ed. It remains to be seen if the seizure can be mitigated since any irregularity converts the item to "contraband" that some USF&WS Solicitors are claiming cannot be returned to the owner. The enforcement now supersedes the importance of the underlying, lawful conservation strategy. The remission process may be an empty procedural promise. By the time you read this in July, we will have argued the constitutionality of forfeiting a costly trophy for a minor offense in two cases before the 9th Circuit Court of Appeals. Those two cases will determine if hunters are protected from excessive forfeitures like other owners of property. ■

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