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"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

□ **Special Report**

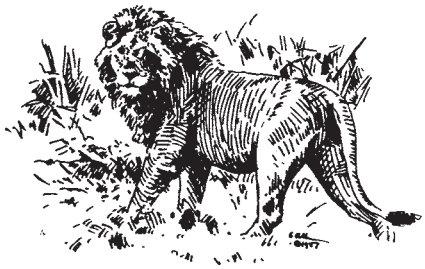
Tanzania To Enforce Age Limits On Trophy Lions

In a joint meeting between the Ministry of Natural Resources and Tourism and the Tanzania Hunting Operators Association (TAHOA) a resolution was passed imposing new substantial limits on harvestable lion. The resolution was passed in June, 2009 and will govern the action of the Ministry as well as all the professional hunters and safari operators in the country.

The resolution provides that everyone should strive to limit trophy-hunted lion to those six years of age, but in no case should lion less than five years of age be taken. This means that five-year-old lion will be tolerated, but should not be targeted as such. Trophies of lion four years old or less are no longer exportable and a $5,000 penalty will be assessed in such cases. In the event lion less than four years old are taken, the professional hunter will lose his PH license.

This is a very serious step taken by the country with by far the greatest wild lion population in the world. The top operators have been following the six-year-old best practice for several years, but the operators and Ministry now have grown intolerant of those operators that have not.

The end result will be higher trophy quality in Tanzania and virtual



assurance that hunting is having a minimal impact on the lion populations. It will, at least intially, reduce the offtake of lion. It has been unfair to all that some PHs and operators have for whatever reason continued to take juvenile male lion. Advertisement photographs of juvenile lion have not helped the situation at all. Studies have shown that the taking of juvenile lion has an exponential effect on lion populations.

Conservation Force fully supported this move and furnished 25 copies of our *Hunter's Guide to Aging Lions in Eastern and Southern Africa* (available from *The Hunting Report*) to TAHOA for the meeting. Its time has come. A proposal to uplist the lion to Appendix I at the next CITES CoP has surfaced for introduction. The adoption of the higher age limit disposes of most of the assertions made in the draft uplisting proposal.

Though the tourist hunting communities' support of regional and national lion action plans provides the first line of defense against such a listing, the actual regulatory implementation of this step is advisable as well. The whole hunting community is being maligned because of the acts of a few, so, I am sorry to state, it was time for stern regulatory measures.

DATELINE: US

News Analysis
Three Antelope Case A Win For Conservation

There is a lot of confusion and misinformation about the recent US court decision on hunting ranch-bred addax, dama gazelle and scimitar-horned oryx. Few understand that the case was more a win than a loss for hunting conservation.

When the addax, Dama gazelle and scimitar-horned oryx were listed as endangered in 2005 under the Endangered Species Act, a special regulation was adopted allowing their continued breeding and culling as an exotic within the US. Unlike in the past with species like barasingha, eld's deer and Arabian oryx, the Service's special rule provided they could be bred and culled (killed/hunted) without specific permits, and the Service made a general finding that existing exotic wildlife ranching within the US enhanced the survival of these species.

Animal rights organizations filed suits in both California and Washington, DC. It is interesting to note that the Center for Biological Diversity, typically involved in environmental issues, was the lead plaintiff in the first suit in California, although the environment and global warming has no bearing on these species. Other plaintiffs have included HSUS, Friends of Animals, Born Free USA, Bill Clark, Defenders of Wildlife, Kimya Institute, et al.

The case was consolidated in the District of Columbia federal district court and was finally resolved by cross motions for summary judgment on June 22, 2009 after nearly five years of litigation.

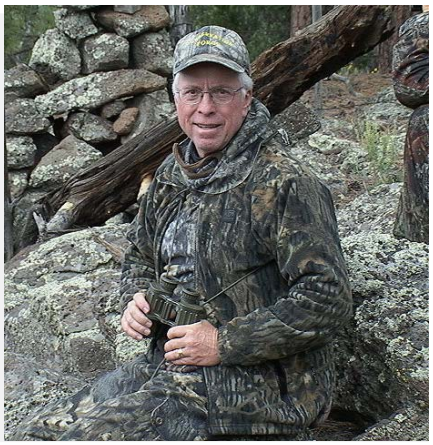
The case is more of a win than a loss for the hunting community. The antis raised every possible issue and lost on all but one. They challenged the very idea of enhancement through harvesting or that the killing of an endangered listed species can ever be treated as "conservation" as defined by the ESA. The antis also made the all-too-common claim that legal trade would lead to increased poaching, which the judge wholly rejected. Instead, the court accepted the USF&WS position that this "alternative" hunting within the US would actually relieve the pressure on the species in native lands. "Causation" of increased poaching was not proven. The USF&WS called such an argument "an ingenious academic exercise in the conceivable," citing Lujon, 50465 at 566, i.e. unsupported speculation.

The USF&WS also defined enhancement. It is worth citing here because of the insight it provides, the recognition it gives to what the ranchers in Texas have achieved and because it is what the court relied upon in denying most of the challenges made by the antis.

"Congress' intent to permit otherwise prohibited activities under the unique circumstances presented in this case is clear…Under Section 10(a)(1)(A) on its face clearly provides the Service authority to permit 'any act otherwise prohibited…to enhance the propagation or survival of the affected species'…The ESA dose not define what actions enhance the propagation or survival of the affected species…

"Here, the dictionary defines 'enhance' as to 'add or contribute to,' 'propagation' as 'increase (as a kind of organism) in numbers,' and 'survival' as 'the continuation of life or existence.' Webster's Ninth New Collegiate Dictionary (1985). Consequently, the 'ordinary meaning' of 'to enhance the propagation or survival' of the Three Antelope species means to add or contribute to an increase in their numbers or to the continuation of their existence. Thus, in sum, the Service is permitted to allow take, import, export, etc. of the Three Antelope species to add or contribute to an increase in the species' numbers or to the continuation of their existence."

As the Service explained, captive breeding of the Three Antelope species is vital to increasing the species' numbers as well as to the continuation of their existence (the three species 'are dependent on captive breeding and activities associated with captive breeding for their conservation'); ('but



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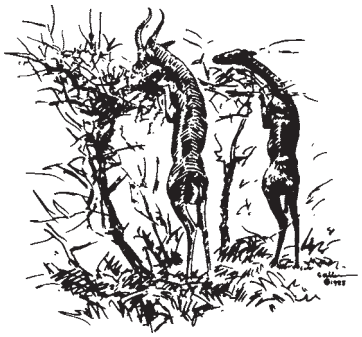
for captive breeding, the species might be extinct'). All three species' populations in the wild have been greatly reduced or extirpated. The world's population of these species is heavily comprised of captive-bred individuals. Captive breeding programs for these species serve to provide insurance against extinction in the wild and will in the future provide breeding stock for reestablishment of natural populations. Captive-breeding is also a significant component of the Action Plan developed by antelope experts of the Sahelo-Saharan Range States and adopted by the Convention on Migratory Species. Captive-breeding facilities in the US currently engage in the propagation of the species.

"Allowing ranches to continue their practice of taking US captive-bred members of the Three Antelope species through sport hunting facilitates captive breeding of the species in numerous ways. First, it provides funds needed to operate and manage herds on ranches. Second, the large amount of land available on ranches provides opportunities for research, breeding and preparation for eventual reintroduction to the wild. Third, ranches maintain a genetic reservoir for future reintroduction in the wild or research. Fourth, ranches serve as a repository for excess males, allowing zoos to use their limited space for more important uses that benefit the species. Fifth, ranches contribute to increasing or sustaining captive numbers. Sixth, ranches may provide an alternative to legal and illegal hunting of wild species in range countries. In sum, based on the plain language of Section 10(a)(1)(A) it is clear Congress intended to permit sport hunting of captive-bred antelope outside of their native ranges as a means to enhance the propagation or survival of the species under this Section of the ESA. Indeed, the Court need inquire no further to hold that the challenged rule passes muster.

"The exemption is also consistent with the design or scheme of the ESA as a whole. Here, although the ESA allows the Service to list foreign species as endangered or threatened anywhere they exist in the world, it also recognizes the sovereignty of foreign nations and the limitations on the jurisdiction of the United States by requiring the designation of critical habitat for domestic species only…

The limited legislative history on Section 10(a)(1)(A) is also consistent with the Service's decision here. In a report, the House explained that activities to encourage propagation or survival may take place in captivity, in a controlled habitat or even in an uncontrolled habitat so long as this is found to provide the most practicable and realistic opportunity to encourage the development of the species concerned. They might even, in extraordinary circumstances, include the power to cull excess members of a species where the carrying capacity of its environment is in danger of being overwhelmed.

H.R. Report 93-412 at 156. This



statement clearly demonstrates Congress' intention to allow the Service to permit certain otherwise prohibited activities that enhance the propagation or survival of a species with respect to captive-bred animals, such as US captive-bred members of the Three Antelope species. The last sentence provides an example of where Congress deemed it appropriate to permit take of listed species to enhance the propagation or survival of the species, though it does not state that this is the only situation where take may be permitted."

In short, the arguments and decision established for the first time in any case that it is legal to breed and hunt (cull) captive-bred exotic wildlife species listed as endangered under the ESA. That is a win! These populations exist because revenue and incentives from the hunting "serve as an insurance policy against total extinction."

Now for the loss. The court concluded "that the text, context, purpose and legislative history of the statute make clear that Congress intended permits for the enhancement of propagation or survival of an endangered species to be issued on a case-by-case basis following an application and public consideration of that application." This "individualized permitting process" is what the special rule in issue dispenses with.

The court explained that the regulations unlawfully dispensed with information such as a complete description and address of the institutions, "full statement of the reasons why the applicant is justified in obtaining a permit….[W]ithout this information, it is impossible to evaluate whether each permitted act will enhance the propagation or survival of the species." Under this rule, "the public is shut out." The court went on to state that "[b]lanket exemptions under regulations are anathema…(to) an individualized analysis."

The regulation was remanded to the Service for revision. It was not vacated. We have corresponded with the USF&WS, which confirms that "the antelope regulation is still in effect at this time," but individuals can register for captive breeding and culling permits. The method of issuing such permits for endangered exotics predates this new rule and is the one under which Conservation Forces' Ranching for Restoration Program operates. We have taken the preliminary steps to begin handling regular permits for these three species, but are waiting for action from the USF&WS that will appeal or revise the regulation. In either case, everyone can proceed as normal for now. A revised regulation may be far less onerous than the captive-bred and cull permit route. It goes without saying that you can't kill off your stock because the special rule, although not based upon individual permits, does clearly require owners to maintain their stock. An owner can sell them to a responsible purchaser, and record-keeping is required.

Briefly Noted

Canadian Wood Bison Progress: We are having a small measure of success in the wood bison litigation. The defendants (Department of Interior and USF&WS) have agreed to make the 12-month downlisting determination and have it to the Federal Register by September 15th. They have also agreed to complete the long-dormant trophy import permit applications by October 13th. In turn, Conservation Force and all those it represents have agreed to an extension of time for defendants to file an answer, and we have not filed a motion for summary judgment, which we were prepared to file for an expedited resolution of this case.

There is no assurance that the 12-month finding will be positive or that the permits will be granted. We will no doubt amend the suit if the downlisting is not positive and/or the permits are not granted. We have reviewed the comments filed in response to the positive 90-day finding and publication. There is every reason to believe from that examination that the 12-month finding will be positive. The Service then has up to 12 months to make the final rule to downlist or not. We are attempting to negotiate a shorter period for the final determination, which is not as important if the permit applications in October are granted because that is what the improved conservation of the species rests upon. If it is downlisted to "threatened," import permits will not be required as it is an Appendix II CITES species and the ESA exempts threatened listed species in most cases if they are also protected by an Appendix II listing.

We have amended the suit, based upon issues being raised in other suits, should we have to proceed. We wish the government was being as cooperative in the other cases. We no longer are surprised by the zealousness of the government's defenses in these suits. It leaves no doubt that the litigation is necessary and that we have been lied to for years. The reality is that the Service firmly stands behind bad practices that are supported by unwritten policies against sustainable use in total disregard of others.

US CITES CoP 15 Positions: International Affairs of the USF&WS has published the positions it is formulating for the next CITES Conference of the Parties, CoP 15, to be held March 13-

25, 2010 in Doha, Qatar. It has not decided anything of great concern to hunting interests, but a number of suggestions have been made to it by NGOs that it has not yet decided and still has under consideration pending further review and consultations.

WWF and TRAFFIC US are apparently lobbying hard to have the US list or uplist a number of marine mammals in the Arctic North. They have asked the US to propose the transfer of polar bear from Appendix II to Appendix I due to trade impacts and climate change. Provisionally, the Service has decided that "overutilization does not currently threaten the species throughout all or a significant portion of its range, but *is exacerbating the effects of habitat loss* for several populations and may become a more significant threat factor in the future. While the species may qualify for listing in Appendix I of CITES, further consultation with other range countries is required.... As a result, the United States remains undecided about proposing… transfer…." [emphasis added] The notice calls for input, particularly from the range states such as Canada. One has to remember that CITES is a means for the USF&WS's International Affairs to end-round the harvest rights native Alaskans have under the ESA and MMPA. They have long regulated US states by that backdoor means, i.e. by CITES listing US species.

The WWF and TRAFFIC also want the US to propose listing of walrus in Appendix II and narwhal for transfer from Appendix II to Appendix I. The Service has both recommendations under review and is required by CITES to consult with the range nations for the species before making a proposal of other nations' species.

It is obvious that WWF is not happy just making the polar bear into the North American panda. An Appendix I listing of the polar bear and narwhal would prevent all commercial trade such as export/import of skins and tusks.

WWF and TRAFFIC also have urged the US to submit a document to initiate dialogue on how CITES might incorporate impacts of climate change in future deliberations such as listings and making non-detriment determinations. The US states it is currently undecided about submitting a document as well as how the issue might be addressed effectively within CITES. – John J. Jackson, III.