



“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

The Unrealized Potential of Conservation Hunting

(Editor Note: Following is the presentation made by John J. Jackson, III, Chairman, Conservation Force, at the Symposium on “The Ecologic and Economic Benefits of Hunting” held in Windhoek, Namibia, September, 2009.)

In the early 1970s, one international convention and one national law were passed that have proven to be significant barriers to conservation strategies based upon sustainable use. The convention is CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It governs international trade of animals and plants threatened by trade. The national law is the Endangered Species Act (ESA) of the United States. The administration of both by the USF&WS is particularly important because America is the largest safari hunting market.

This presentation will briefly describe both CITES and the ESA, then describe known examples where those protective measures obstruct rather than serve sustainable use, particularly *conservation hunting*, because of the

way CITES and the ESA are administered. Both are protective measures greatly influenced by politics. The US administration of both is generally the source of the problem. Although CITES is an international convention, the US has its own regulations implementing CITES for trophy imports into the US.



CITES governs the international trade of animals that the Parties list. Species listed on Appendix II only require an export permit from the country of origin. Those on Appendix I require both an import and an export permit. Commercial trade in Appendix I species is prohibited. Hunting trophies

are not treated as commercial because the hunter’s purpose is personal, not for profit. It is licensed, highly regulated trade that is an expense to the tourist hunter and provides significant funding for the range country’s conservation infrastructure. CITES has long had an interpretive Resolution permitting trophy trade of Appendix I species, Resolution 2.11 (Rev.). The 177 country Parties to CITES have also adopted various Resolutions and Decisions making Recommendations to the Parties supportive of sustainable trade of trophies. Unfortunately, the US does not honor those remedial measures.

To issue an export permit, the exporting country’s authorities must make a biological *non-detriment* determination that the trade is not detrimental to the survival of that species. In the case of Appendix I listed species, the importing nation must also issue an import permit. The importing country must also make a determination that the “purpose” of the import is not detrimental. That is where most

problems arise. Consequently, the Parties have adopted a number of measures to overcome those problems.

The Parties revised Resolution 2.11 to further facilitate hunting trophy trade at the 9th Conference of the Parties. It provides that ordinarily the biological non-detriment findings of the exporting nations should be accepted rather than judgmentally reexamined by the importing country. That CoP also adopted Resolution 9.21 to make it clear that quotas adopted by the Parties as a body at a CoP should be accepted as the required non-detriment finding for both the biological export and importing countries. Such a quota should eliminate the need for any further non-detriment finding.

CITES has adopted species-specific quotas for leopard, cheetah, markhor in Pakistan and black rhino to facilitate the trade of hunting trophies of those species. It has done little good because the USF&WS has not honored the quotas even when the species is not also listed as endangered. It has insisted upon making its own biological non-detriment finding. For example, it took years to establish import of leopard trophies from Mozambique even though there was a CoP leopard quota for that country and the leopard in that country were never thought to be at risk according to CITES records.

CITES has also downlisted some species altogether or with an annotation that the downlisting from Appendix I to II is only for trophy trade. The Canadian wood bison was downlisted for that purpose. Both African elephant and white rhino in some range nations have been conditionally downlisted with an annotation that it is only for trophy trade and all other trade is still on Appendix I. That includes the elephant in Botswana, Zimbabwe, Namibia and RSA. It is imminently clear that the Parties have endeavored to overcome the US CITES import practices. Downlisting with an annotation has worked, hence we expect such downlisting proposals at CoP 15 in March 2009 for Tanzania, Zambia and Mozambique elephant because of the fits the USF&WS has given those countries to have trophies imported. It has

not worked when the species is also listed as “endangered” on the United States’ own Endangered Species Act, which we will discuss in a moment.

In August 2007, the USF&WS adopted its own administrative CITES regulations in derogation of most of those CITES Resolutions intended to facilitate trade. The codification formalizes the USF&WS position and practices that are contrary to the Resolutions aimed at facilitating tourist trophy trade. Those new regulations exclude trophies crafted into utilitarian items from trophy treatment; require the Service to make its own biological and management finding before issuing an import permit rather than accepting the findings of the export authorities; declare that the US will not honor quotas established by the Parties as non-detriment findings, despite that being the very purpose of the quota system.

I must add that the USF&WS Division of Law Enforcement is extremely autocratic and unforgiving in import inspections. Millions of dollars of trophies are detained, seized and involuntarily forfeited for the smallest unintended clerical errors, even though the legal take and authenticity of the trophy is undisputed.

Under CITES, Parties to the Convention are entitled to have stricter domestic measures. The Endangered Species Act of the United States is such a measure. The USF&WS more restrictively administers the ESA than the USF&WS administers CITES.

The ESA lists species worldwide. Species are listed as “threatened” or “endangered.” Most of the mammals listed under the ESA are foreign. The rub is that such listings don’t provide the benefits for foreign species that they do for US domestic species. It seems to be easy to list a foreign species when there are few cost considerations. Normally, the species are listed over the foreign range nation’s objections and in some cases simply because the species status is not known or documented to the satisfaction of the USF&WS.

Import of hunting trophies of species listed as threatened are statutorily



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*, 9200 S. Dadeland Blvd., Suite 523, Miami, FL 33156-2721. 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
9200 S. Dadeland Blvd., Suite 523
Miami, FL 33156-2721.

Tel. 305-670-1361. Fax 305-670-1376.

“Serving The Hunter Who Travels”

protected from import restriction in all but one instance, a special rule governing argali. Species listed as endangered can be imported when the agency finds that it enhances the survival or recovery of the species, but the Service has made that finding in only one instance: it permits import of bontebok hunting trophies from the Republic of South Africa that are taken on ranches registered in RSA’s bontebok conservation program. Recently, the USF&WS failed to adopt a policy that would have permitted import of trophies in select cases as a conservation tool for endangered species when it was found to be a net benefit to the survival of the species and part of the foreign nation’s conservation strategy for the species. The agency claims the effort was killed by the Bush Administration at the highest level.

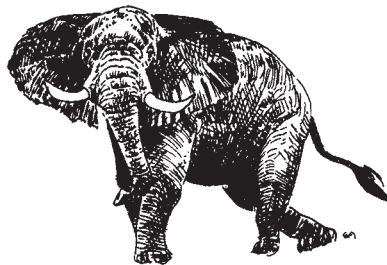
The decision not to adopt the more up-to-date policy was made because of concern for political fallout from activist constituents was greater than the interest of the species and the expert advice of the agency. The species that could benefit and the management authorities in foreign countries and indigenous peoples don’t vote in the United States.

In historical perspective, the African leopard was the first problem. It was not importable into the US until a successful campaign downlisted sub-Saharan leopard from “endangered” to “threatened” under the ESA.

When the African elephant was uplisted to CITES Appendix I, the USF&WS would not issue the required import permits. Worse, it treated the processing of the import permit application as a “low priority.” Suit had to be filed to establish import of elephant from Namibia, RSA and Tanzania. The USF&WS end-rounded that success under CITES by adopting a special regulation under the ESA (it is “threatened” under the ESA) that requires proof of *enhancement* as if it were listed as endangered. This has to be treated as politically driven because the taking of so few adult males is not biologically significant. South Africa, Botswana, Namibia and Zimbabwe have found it advantageous to have their el-

ephant downlisted to Appendix II for trophy purposes, but Tanzania, with the second largest elephant population, has periodic import problems in the United States. Tanzania, Mozambique and Zambia have prepared downlisting proposals with a trophy annotation to surmount that US import problem at CoP 15 in March, 2010. The USF&WS would not allow import of elephant from Mozambique even though the quota allocation was limited to two elephant per year in a renowned community development project.

At CoP 8 in 1992, Namibia was given a trophy quota of 250 per annum for its cheetah to help facilitate trophy trade with the express idea it would help create tolerance by the local people. Ninety five percent of the cheetah live on private lands and are dependent upon the good will of those



landowners. It was a conservation strategy supported by the IUCN Cat Specialist Group. The icing on that conservation cake was that the hunting community took an active part in implementing the conservation strategy. Dr. James Teer was engaged to meet with the USF&WS, then travel to Namibia to establish an agreement that would further enhance the survival of cheetah. An *“enhancement agreement”* was struck in which more than 100 private landholders agreed to treat cheetah as a game species rather than vermin, charge as much for their take as for lion and leopard, and ensure the tourist hunter contributed an extra \$1,000 dedicated exclusively for cheetah conservation (potentially \$250,000 per year). There was no capital fund like it or equal to it in the world. The hunt-

ing community also contributed to the cost of the completion of a National Strategic Action Plan that was completed by the Vice Chair of the IUCN Cat Specialist Group and remains the state-of-the-art example to this day.

Tens of thousands of dollars were poured into cheetah conservation in Namibia. The creation of a predator committee of NGOs and government and the appointment of a Predator Coordinator in the Wildlife Department all arose from the effort. The effort and effect would take volumes to describe. Though promised, the USF&WS denied the import permits and even denied an ESA downlisting petition. At one point, the Service made a positive CITES non-detriment determination required for CITES Appendix I species (independently of the CoP-established quota), but because of political policy it never could make the “enhancement” finding required by the ESA. The USF&WS authorities admitted its practices and policy were not in the best interest of the species, but they could not get the political approval from above to change the longstanding practice of not finding “enhancement” under the ESA. After more than 10 years, the program has unraveled then folded and only remnants of the effort remains. Even the leadership of the Namibian Professional Hunters Association abandoned the effort. When the Bush Administration was unwilling to pay the political price of approval, the USF&WS literally asked that the pending permits be voluntarily withdrawn. When they were not, the Director in February 2009 denied the initial import permit applications that had been pending since 1994 – 15 years. That was the final nail in the coffin.

Namibia has the largest and best-managed cheetah population in the world. Even the Cheetah Conservation Fund supported the limited hunting. That country still has a robust population, but the potential of the conservation hunting and all associated benefits has failed to be realized. The ESA listing could have been utilized as a positive tool as intended by its authors. Instead, as administered, it is a barrier. No one is being held account-

“Serving The Hunter Who Travels”

able for what happened.

The markhor in the Torghar Hills Conservation Project in Pakistan is another example. It is a world-renowned, award-winning program that has restored those markhor from 200 to more than 2,000 through conservation hunting. At CITES CoP 10, the Parties created a quota for the markhor to facilitate the export-import of the trophies. The Pakistan authorities stated at that CoP that denial of the quota would deny the species the “single most effective conservation tool at our disposal.” The problem has been that this population is a straight-horned Suleiman markhor, which the USF&WS has listed as “endangered.” The IUCN and Project Leader filed a downlisting petition in 1999 with the USF&WS which made an initial (90-day) finding that the downlisting may be warranted. The Service published with that finding that “[a]llowing a limited number of US hunters from this population could provide a significant increase in funds available for conservation and would provide a nexus to encourage continuation and expansion of the project into other areas.” The Service has not completed that downlisting and worse, the species has been denied the automatic five-year review due all listed species because it is supposed to be under review already. Recently, a suit has been filed to compel that downlisting after the necessary 60-day notice of intent to sue was sent. Instead of downlisting the species, the Service has raised the defense that after six years the statute of limitations prevents any legal action. The downlisting petition may have to be filed again.

Applications for import permits have also been filed, but they have not been processed. Response to a Freedom of Information Act request has indicated that the USF&WS had not made a CITES Appendix I non-detriment finding, much less an enhancement finding necessary under the ESA. Permit applications have been filed since at least 2000, but none approved.

The loss of potential is more quantifiable in this case than in many others. Permit me to explain. Some years

the project has not been able to sell their nominal CITES quota, which they could if US hunters could import their trophies. Even more telling is the difference in price of the markhor hunts from areas where markhor trophies are importable. In 2007, after more than a decade of effort, the hunting community was able to get approved import of a few flare-horned markhor from Pakistan. Those were listed on Appendix I, but not the ESA. The approval



still took years because the USF&WS would not honor the quota set by the Parties at a CoP. Instead, it had to make its own finding and insisted upon making a biological non-detriment finding instead of the simpler finding required by CITES for trade in Appendix I trophies that the purpose of the import was not detrimental. In fact, USF&WS initially denied the import permit ap-

Conservation Force Sponsor

Grand Slam Club/Ovis generously pays all of the costs associated with the publishing of this bulletin. Founded in 1956, Grand Slam Club/Ovis is an organization of hunter/conservationists dedicated to improving wild sheep and goat populations worldwide by contributing to game and wildlife agencies or other non-profit wildlife conservation organizations. GSCO has agreed to sponsor *Conservation Force Bulletin* in order to help international hunters keep abreast of hunting-related wildlife news. For more information, please visit www.wildsheep.org.

GRAND SLAM CLUB  OVIS

plication. When approved after administrative appeals, the price of the trophies climbed from \$45,000 to \$150,000 per hunt. The next year, three hunts were sold to US hunters at a total price of \$450,000. That is more than three (3) times the price that Torghar area markhor continue to sell for.

The USF&WS has published that “[s]ince the Service cannot develop recovery plans for foreign species, priorities... must by necessity take into account the conservation programs of other countries....” In that same Federal Register Notice which stated that an ESA listing “may have potential conservation detriment for some species” and “[c]ertainly, the United States should endeavor, when possible, to recognize the conservation programs of foreign countries when based on sound science....with regard to foreign game species, fees from trophy hunters can, in some cases, provide economic incentives for landowners to maintain healthy population of game animals... [a] large percentage of international hunters are Americans who might invest in the hunting program if the species... import was permitted.” Politically, the Service has not been able to do what it knows is right and the hunting community has been ill-advised not to make an issue of it.

Despite openly coming to realize the downside of listing foreign species on the ESA and the political inability to administer the ESA responsibly, the USF&WS continues to list foreign species. The threatened listing of all polar bear in the world is the most recent example. In this instance, the listing triggered a provision under the Marine Mammal Protection Act of the US that prohibits import of all ESA listed marine mammals. The Service acknowledged the conservation benefits of the hunting in Canada, yet listed the bear over the objection of Canada. It said it could not take that into account or even consider “the efficacy of the listing” towards the bear’s conservation. The Agency listed the bear knowing it would obstruct the conservation strategy and would not provide benefits. The furor of the moment prevailed. – John J. Jackson, III.