SPECIAL SUPPLEMENT

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

World Conservation Force Bulletin

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HSUS Threatens Conservation Force's Asian Projects and Partners

DATELINE: Asia

NEWS...NEWS...NEWS

John J. Jackson III

Humane Society International (HSI), the international wing of the Humane Society of the United States, has made a direct attack on Conservation Force's critical projects for "endangered" Eld's deer in **LAOS**, **VIETNAM**, **CAMBODIA**, **BURMA** and **THAILAND**. It has once again gone to our conservation partners and intimidated them into refusing to accept the hundreds of thousands of dollars (over a period of years) that we have been directing to restoration projects for Eld's deer in this species' countries of origin in Asia.

The projects are part of Conservation Force's *Ranching for Restoration Program*. In that program, Conservation Force gets a small percentage of the revenue from the hunting of certain exotics in the US that are listed under the Endangered Species Act (ESA). In turn, Conservation Force funds projects in the countries of origin of the respective species, such as the native countries of Eld's deer in this instance. The establishment and funding of those projects in the native lands is the "enhancement" of the survival and perpetuation of the species that must be demonstrated for the ranchers in the US to get cull permits to control their surplus Eld's deer through limited hunting. Of course, the culling is a necessary management tool itself to maintain the health of the herds, and the ranchers' hunting revenue offsets the stewardship expenses. The percentage that is funneled into Conservation Force's projects in Asia is the lifeblood of those Asian projects and necessary for the issuance of the permits.

HSI's intent is to prevent the hunting by disrupting the acceptance of the money by Conservation Force's partners and the expenditures of those funds. By acting as a conduit of the funds, Conservation Force has been able to spare ranchers the headaches they used to have when the projects rejected their funds after HSUS threatened them. Conservation Force substituted for them over a decade ago. Conservation Force establishes worthy restoration projects in Asia and even provides free legal services to ranchers to obtain their captive breeding and cull/hunt permits. It is not as easy to intimidate Conservation Force or to disrupt the chain of funds to the necessary projects because Conservation Force is a member of IUCN and yours truly serves on various Specialist Groups, such as both the Deer and Antelope Specialist Groups of IUCN, which readily and responsibly need the funds. Conservation Force is in the business of using hunting as a force for the conservation of species. The funds pass through Conservation Force without administrative fees or charges of any kind and are generally augmented, if not fully matched, by Conservation Force and its partners. Conservation Force and its supporting partners, such as Dallas Safari Club, Houston Safari Club, African Safari Club of Florida and the International Professional Hunters Association, bear the administrative costs of the program.

This time, HSI threatened Conservation Force's project revenue recipients with public ridicule, loss of membership and controversy if they accepted the money from Conservation Force and pressured them to notify the USFWS that they are no longer partners and will not accept the money from Conservation Force that is necessary for the captive-bred and cull permits issued to US ranchers. The HSI aim is to eliminate the exotic game hunting even though it is the primary source of revenue for the restoration projects.

This is a deliberate attempt to obstruct an ESA recovery program of the USF&WS and the conservation purpose of the ESA. HSUS has once more demonstrated it places its campaign against hunting above the welfare of animals and even the very survival of the entire species. They would rather see the species cease to exist than be hunted, and they have told me so on more than one occasion.

Their objective is to make it impossible for the ranches (mostly in Texas) to get the necessary permits to operate. The ranches must have projects restoring these species, as this is the basis of the enhancement finding required for their operating (cull) permits. Though Conservation Force is there to see HSUS does not succeed, the intimidation can and has disrupted restoration and perpetuation efforts. Projects fold without needed revenue, and few have enough support. Some decade old recovery-related projects will no doubt be discontinued.

> *"They would rather see the species cease to exist than be hunted..."*

In fact, the HSI strategy obstructs projects and interferes with the continuity, but it does not stop the permitting if we stay a step ahead. Some herds that have been restored will succumb without the funding. In those cases, all the money that has been expended on them will have gone for nothing, or at least not have served to

further the long-term survival of that particular dependent population.

There is no doubt that hunters and ranchers are the heroes and stewards in this instance, while the animal rightists are the villains. They would "rather see the species cease to exist than be hunted." They are attempting to blow out candles of hope across Asia.

Conservation Force has had its *Ranching for Restoration Program* for over a decade. We have been able in the past to institute new projects in range nations to stay ahead of the sabotage. Still, what a shame! One project compromised by HSI was more than 10 years old and, like many of the others, is the foremost restoration effort in the world for the species.

It does raise concern if the scimitar-horned oryx, Dama gazelle and addax are also put under the same project-dependent permit system as proposed by USF&WS (76 FR 39804, July 7, 2011). The animal rights organizations succeeded in having a court order issued that individual ranch permits and publication of the applications was a legal necessity. Now they have made an all-out attack to prevent the caretakers and stakeholders with the exotics from getting permits that they learn of through the court-ordered publication. It may be time for the USF&WS to find that culling is an ordinary and necessary management practice to maintain captive-bred species within carrying capacity, thus enhancement without additional proof of related projects in range countries. We have called these developments to the attention of the USF&WS and made the suggestion that the system be changed to protect the benefits from the two-sided attack (court order to publish and issue individual ranch permits and threats to recipients of conservation funds from the same ranch permittees.) In the meantime, Conservation Force and its Texas conservation partners are doing more for these species in need than all the animal rights organizations combined – but you knew that. Regulated hunting does not threaten species, but "animal rights" does. ■

Markhor III Suit Filed to Compel 12-Month Downlisting Finding

DATELINE:
Pakistan

In late November, Conservation Force filed its third suit in support of the Suleiman markhor conservation strategy in the Torghar region of **PAKISTAN**. This 24-page suit is simple. The defendants, USF&WS and Department of Interior, failed to make a timely 12-month finding on the downlisting petition we filed on August 17, 2010. They also failed to respond to the notice of intent to sue. They also failed to respond at all to our efforts to reach an agreement on a compromise date to make the mandatory 12-month finding. The legal deadline and our efforts to amicably resolve their violation of the law were completely ignored. The USF&WS claimed that we waited too long to sue to enforce the first downlisting petition. They have missed the deadline again, but we will not make the same mistake.

The USF&WS made a positive 90-day finding on June 2, 2011 when it also noticed a comment period (76 F.R. 31903). That comment period ended August 1, 2011. There were no substantive comments opposing the downlisting. The foremost authorities in the world filed comments supporting the downlisting. For example, the IUCN Caprinae Specialist Group wrote that the Torghar Project "is a very rare example of 'conservation hunting' of mountain ungulates in Asia that actually lives up to its name. It is supported by the local population, based on scientific principles, including regular surveys of the population, and has provided tangible benefits for conservation of markhor, urial and their habitat." Similarly, Michael Frisina, Ph.D., the

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principal ex-patriot scientist on the project since 1997 agreed. "[S]cientific monitoring has been ongoing and the success of the sustainable use hunting program being the major factor in bringing the population back from the brink of extinction is well documented in peer reviewed publications.... Thanks to the sustainable use hunting program, the population is currently the largest straight-horned markhor population in existence."

"...the sustainable use hunting program being the major factor in bringing the population back from the brink of extinction is well documented in peer reviewed publications..."

This is the second petition to downlist these markhor that the defendants have neglected. This petition was filed when, upon being sued for failure to process the 1999 petition, defendants raised the legal defense that suit to compel that 12-month downlisting finding was time barred because of the passage of more than six years. The downlisting petitioners in the 1999 downlisting petition did not join in the current downlisting petition to avoid the perception that the second was merely an amendment to the first petition. But they have joined in the suit to enforce the second downlisting petition. This petition was filed because of Defendants' representation that the first was unenforceable due to the suit being time barred. The plaintiffs in Markhor III are Conservation Force, Steve Hornady, Barbara Lee Sackman, Alan Sackman, Jerry Brenner, Dallas Safari Club, Houston Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/OVIS, Wild Sheep Foundation, Naseer Tareen and the Society for Torghar Environmental Protection (STEP).

The Markhor III suit also includes a claim that the USF&WS has failed to make a five-year listing status determination. That is a wholly separate ESA obligation to review the status of all listed species at least once every five years. This is also a mandatory requirement, not a matter the USF&WS can neglect at their discretion. This claim was in Markhor I but dismissed by the court when USF&WS argued that it needed specific notice of the particular section of the ESA alleged to be violated 60 days before suit. ■

Serious Irregularities in Administrative Records and Scientific Findings

In early December the USF&WS finally filed the Administrative Record in the Markhor II suit. It is the record for the permit applications that were denied. Actually, it is just a pretense of the real Markhor II record.

The Administrative Record contains reams of reports favoring the Torghar program and expressing the importance of hunting to the recovery of the markhor, but few documents from the permit application processing. It contains a Division of Scientific Authority (DSA) opinion that the issuance of the permits would not be detrimental but also a contradictory Division of Management Authority (DMA) opinion that it would not enhance the survival of the species because it will probably be detrimental. That contradictory opinion is not on appropriate stationery, is not dated and is not signed! Apparently no one in the DMA would sign such an opinion!

Although the Administrative Record has a sworn certificate that it is the entire Administrative Record, it is not. For example, it does not contain the agency's earlier DSA and DMA findings, the Section 7 Consultation described in the denial cover letter, any of the related published notices and comments to those notices, correspondence to and from the applicants and their attorneys, the usual drafts and signature chain for the negative DMA determination or even notes of privileged communications with the Interior lawyer.

The absence of an authentic DMA Advice really raises questions. Readers may remember that in the Wood Bison denials the final determination to deny the permits was based upon the intervention of a top Department of Interior lawyer in "privileged" meetings over the objection of the senior biologist that protested the lawyer's substitute facts and findings and stated it was not a science-based determination. From the Administrative Record in the Wood Bison case, it appears that the responsible staffers were compelled to substitute falsified scientific findings. This is what happens when politicians intercede to protect their self-interest or political image instead of implementing the law. Permit applications for both wood bison and Suleiman markhor were not processed for a decade so as not to embarrass those who would take the political heat. The applications were never to be processed despite the goals and purpose of the ESA, the implementing regulations and the conservation needs of the species and benefits of the programs. When on the verge of being compelled by the court to complete the processing of the permits languishing for up to 10 years, the staff biologists apparently were prevented from making sound findings and coerced into substituting findings in both the wood bison and markhor applications that

"...it appears that the responsible staffers were compelled to substitute falsified scientific findings."

had little basis in fact or likelihood. The concern was not the enhancement or recovery of the wood bison or markhor, as the ESA directs. The first concern was the self-interest of the Administration to protect itself from political ridicule. Should that be a legitimate reason to falsify the scientific findings? Where is this charade going to end?

When suit was filed to compel the permit processing, the permits should have finally been granted. Instead, the scientific findings were politically overridden and changed over protest, i.e. falsified. The DMA finding was changed, and the Department of Interior lawyer thanked the biologists for the changes that they had protested.

The record produced for the markhor is more suspect because it is not signed or dated. We have never before seen one that was not signed and dated and gone through a signature chain. It is as if no one would sign it and it was supplied from above, particularly since it contradicts the findings of the Division of Scientific Authority and everything in the Administrative Record. It appears to be a falsified record as well as falsified scientific findings. It can't really be called the true record, though it has a sworn certificate.

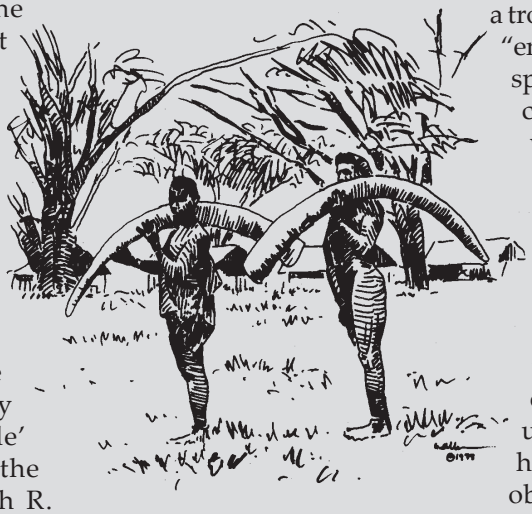
Enough is enough. As this is written, the plaintiffs are preparing a motion to suspend all proceedings in Markhor II and to take the depositions of the individuals who swore to the certificate that the records produced contained the entire Administrative Record, the senior biologist that should have made the finding and the Chief of DMA that did not sign or date the DMA determination that contradicted the findings of the DSA. ■

Can You Offer for Sale or Sell an "Endangered" Listed Species Without a Permit?

We regularly get inquiries on whether trophies that are listed as "endangered" can be sold. So, we thought a recent criminal conviction of an individual for posting an advertisement on an internet auction site (a mere "offer for sale") would be of interest to readers.

In *United States of America v. Gerard Jerry Snapp*, No. 10-50043, United States Court of Appeals for the Ninth Circuit, March 22, 2011, the appeals court upheld the criminal conviction of Gerard Snapp for the unlawful act of "offering for sale" an endangered wildlife species which is prohibited by 16 U.S.C. 1538(a)(1)(F). Snapp listed an elephant skull for sale on Craigslist.

There is a USF&WS regulation explaining that the prohibition against offers for sale excludes advertisements accompanied by a warning that no sale will be consummated until a valid permit is obtained, but the appellate court in this case upheld the trial court, which refused to give the jury instruction charging the jury with that regulation because of the facts of the case. Apparently there was no such condition in the ad, and the defendant offered to sell it over the phone without the permit when so asked.



This is not the first such case. The mere "posting of an advertisement on an internet auction site would be enough to satisfy an 'offer for sale' in violation of the ESA," Elizabeth R. Beardsley, "Poachers with PCs: The United States' Obligations and Ability to Enforce Endangered Wildlife Trading Prohibitions Against Foreign Traders Who Advertise on eBay," *UCLA J. Envtl. L. & Policy 1. 17* (2006). In United States v. Clark, 986 F.2d 65 (4th Cir. 1993), the defendant was convicted for advertising the sale of a Siberian tiger skin rug in the *Washington Post* newspaper.

"...it is illegal to offer to sell an endangered listed species."

In short, it is not only illegal to sell a trophy part from an "endangered" listed species in interstate commerce without a permit, you can't even advertise it unless the advertisement has "a warning to the effect that no sale may be consummated until a permit has been obtained from the USF&WS." 50 CFR 17.21 (f)(2). This rule does not apply to sales wholly within your state, but it does apply to offers of sale in publications with broader distribution and reach because "for sale" advertising is a crime in and of itself.

In short, it is illegal to offer to sell an endangered listed species. Sale is not necessary. It could be lawfully sold with a permit, but USF&WS will not issue a permit. ■

Conservation Force Sponsor

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