



“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

DATELINE: US

News... News... News Cheetah & Black-faced Impala Permits Denied

On February 23, 2009 the International Affairs section of the USF&WS separately but simultaneously denied the final appeal of permit applications to import cheetah and black-faced impala from Namibia. This ended two initiatives to import trophies of those “endangered” listed species that began 17 years ago and set the course of my life. Those initiatives are over, and there is little hope any longer of ever importing those trophies into the USA. It is no longer advisable for US hunters to take those two species in Namibia with any expectation that they will be importable.

The appeal before the Director of USF&WS for the cheetah was orally made in 1997 after the test import permits were denied and our request for reconsideration was also denied. At that time we were frankly told that there had never been a better documented

case to import an endangered listed species and that the USF&WS would grant the permits and asked yours truly not to file suit. The promised import permits never materialized. Later, after President Bush took office, the permits were repeatedly promised, but we were told a change in practice of that nature had to be approved at the White



House level. It was not approved. Instead, each time it was proposed by the highest level in the Interior Department and the USF&WS, it was not approved by the White House.

The final denial of the cheetah permits only cites two (2) simple reasons: 1) “We have found no evidence that

Namibia, either at the time you hunted or currently, has had a robust management program for cheetah that would provide for a sustainable harvest of the species,” and 2) “In addition, neither at the time you hunted or currently, has there been a reliable scientifically based estimate of the number of cheetahs in Namibia....Without this basic information and a well-developed management program that incorporates sport hunting, it is not possible for the Service to determine if the import of a sport-hunted trophy would meet the criteria established under the Act.”

The reasons conflict with the facts and prior findings. The management program is the best in the world, and the hunting is an integral and express part of that plan. The management plan was completed by the IUCN Cat Specialist Group and remains today one of the most comprehensive ever drafted for any wild cat and acts as a model for others. The cheetah population estimates that exist are as good as any wild population of cats in the world and have reflected a stable or increasing population. The reasons for the denials were engineered after two Admin-

istrations (Clinton and Bush) failed to follow the advice of the USF&WS and DOI to permit the imports and only after the Acting Director that signed the final denials asked me to voluntarily dismiss the applications without deference for the 17 years worth of work behind them.

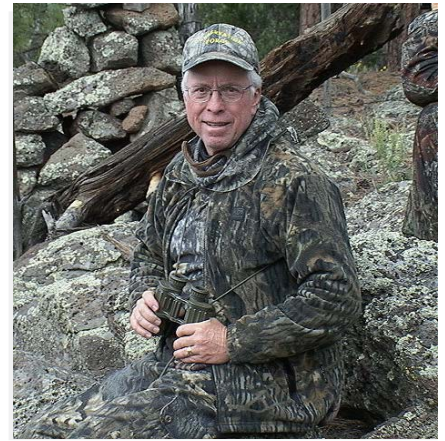
The only remedy remaining now that the denials are final is filing suit in Federal District Court in Washington, D.C., which we are considering. That will be an enormous undertaking, considering we have 17 years of material that will take several months just to review.

As with the cheetah, the appeal of the black-faced impala permit application denials was orally argued before the Director in July 2006. On February 23, 2009 all those test import applications were denied. A two-fold reason was given. “No government-sponsored comprehensive management plan for black-faced impala existed or was being implemented in Namibia at the time your trophy was taken. In addition, sufficient steps were not being taken at the time of your hunt to ensure that the existing populations of black-faced impala in Namibia did not become *hybridized* with common im-



pala introduced from South Africa to game farms within Namibia.” (Emphasis added.) The first is not entirely true in the sense that Namibia has long had a plan that did reintroduce the black-faced impala, though out-of-date. The second is true, for Namibia has not adopted or implemented the new plan drafted that was recommended to them and necessary to prevent the hybridization. That hybridization of black-faced impala is the threat today and must be taken seriously, but the plan to deal with it has not been adopted, much less put into effect by the authorities in Namibia.

We initially undertook this at the request of the Minister in Namibia, who has long since departed office. We must advise hunters that they will not be able to import black-faced or even hybridized impala from Namibia until the plan is adopted. We will continue the black-faced impala initiative, monitor and participate, but imports will not be possible until Namibia chooses to adopt the plan that has been drafted. We have no plans to file suit over the denials. Those denied can resubmit their permit applications if and when Namibia adopts the plan addressing hybridization.



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● **Briefly Noted** ●

Unprecedented Litigation: Conservation Force already has seven (7) suits and or claims in San Francisco challenging illegal trophy seizure and forfeiture practices, as well as in Denver, Houston, Atlanta and Los Angeles (11 seizure challenges). More will follow. We also have the Oakland polar bear appeal for the import of those polar bear taken the spring of the listing. That is tentatively scheduled for argument before the Ninth Circuit Court of Appeals at its Alaska site in early August, 2009.

We also have the suit challenging the polar bear listing itself that is con-

solidated with many others in the District of Columbia. Additionally, we have the two suits to force the downlisting and/or import of Suleiman markhor and Canadian wood bison. Extensions of time to answer have been filed by the USF&WS defendants in those two cases.

On May 21, we also filed suit challenging the Director’s final denial of Mozambique elephant trophy import permits. Also on May 21, we filed suit over the denial of the test enhancement permits for polar bear trophy imports that have been denied. That is 17 suits

or claims in total in federal courts and there are many more to come. These suits are up to 70 pages in length.

This was coming for some time, and we don't “cry wolf.” There is nothing like it in the history of the hunting world. Worse, the litigation is just one indication of the state of international hunting. If your children and grandchildren are to hunt in foreign lands, we have no choice. If foreign game and habitat is to survive, we have no choice. Someone has to do it, or it is gone and gone forever. We cannot just turn our heads or duck these issues any longer. The forfeitures are real, the denials are final, and conservation programs have been obstructed for 12 to 17 years. Two administrations have promised relief while things were made worse. To quote one very sincere and highly regarded minister, “John, your government is lying to you!” Well, we are not going to take it anymore.

We hired two extra lawyers and three extra paralegals to help with the increased load. We are asking those individuals directly benefiting to help with the costs. It is astounding that some people we have successfully helped will not contribute a dime. That has demoralized staff and volunteers and has to change.

Scimitar-Horned Oryx Are Not Importable: We keep noting in the Federal Register that US hunters are applying for enhancement import permits for scimitar-horned oryx they have been persuaded to take in South Africa. All of the applications are denied and will continue to be denied. There is not the faintest hope or representation by the USF&WS that import permits will ever be granted. Don't let anyone mislead you into thinking that you can import a scimitar-horned oryx if it is taken in South Africa. It absolutely won't happen.

The scimitar-horned oryx has been listed as endangered on the ESA. They are harvestable within the US under a special rule, but there is no such exception for those taken outside of the US. When the listing was proposed we approached the various provincial and national wildlife authorities, but RSA was going through a transition that

expressly included ridding themselves of exotics. The scimitar-horned oryx is not a native species of RSA. The authorities want it eliminated. There should be no pretense that they are being conserved or enhanced in RSA or can be imported into the USA. Be forewarned.

Polar Bear Enhancement Permits Denied Again – Suit Filed: Things have moved fast for the test permit applications to import polar bear hunting trophies under the untested provision for enhancement. Despite that the Justice Department in the polar bear suits and the Solicitor for the Department of Interior have suggested that polar bear may be importable under the enhancement section, which is a different part of the Marine Mammal Protection Act (MMPA) than the one under which they have been imported



since 1996 (1994 MMPA reform), the request to reconsider the denials already has been denied. Conservation Force has filed suit in the Federal District Court in the District of Columbia.

On March 18th Conservation Force filed a request for reconsideration. In early May the USF&WS denied that request. The denial was clear. The benefits from the hunting, though admitted, are not significant enough to be “enhancement” and neither correct or are directed to global warming, the cause of the depletion. Therefore they don't constitute the kind of enhancement meant in the MMPA. The species is considered depleted due to global warming, so the cause of that listing must be addressed to be enhancement. This is a “catch 22” because the depletion is a fiction. Though the regulation states the enhancement must help

“maintain” or “recover” the listed species, the USF&WS ducked the issue by taking the position that in either case the benefits must be directed towards the cause of the depletion: global warming. The fact that this particular population of bear is not in decline and its ice habitat is one of those projected not to melt, rather, it will improve, made no difference. The trophy imports must “ameliorate the primary threat to polar bear populations – global warming and ice melt.” Apparently it is not relevant to the USF&WS that this particular population is not threatened according to its own projections.

We have already filed a 35-page suit. We filed suit on behalf of the seven hunters and Conservation Force on May 21, Case no. 1:09-cv-00941 in the District of Columbia. It is not being consolidated with the other polar bear cases because it involves imports under a different, untested provision of the MMPA and does not challenge the listing or 4(d) Special Rule. The case can be found on Conservation Force's web site at <http://www.conservationforce.org/news.html>.

Mongolian Argali Population Numbers: The USF&WS recently sent an inquiry to Mongolia for up-to-date population status and management information on its argali. It was not possible to provide an up-to-date population estimate in time for the upcoming argali hunting season. Dr. Michael R. Frisina, Baigalmaa Purevsuren and others did a “spot” survey in eight locations during April of 2009. A total of 1,159 argali were observed in five days. Though the survey is not comparable to the last Frisina survey in 2007, it was positive and the argali were abundant. Unfortunately, the High Altai is not one of the checked areas because the weather would not permit survey activities. That is one more reason import permits for High Altai argali are not likely this season.

Later in the year a range-wide survey is planned that will be comparable to the comprehensive 2002 survey headed by Frisina in time, methodology and supervision. That should provide necessary trend insight.

Still another state-of-the-art survey

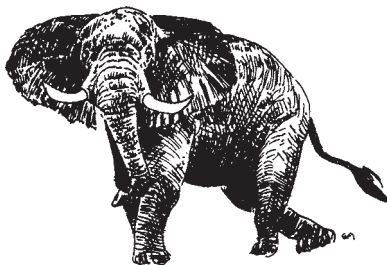
is to be done by Richard Harris and others this October that is also supposed to encompass the entire range of Mongolia's argali. It will be a wholly different methodology. The method, range and time of year are expected to vary the results from the Frisina survey, but it should certainly provide a good snapshot of the population today. Despite these two range-wide surveys, there will still need to be better management to reestablish and keep trophy import allowances for this “threatened” listed species. That is harder to do than surveys.

San Francisco Trophy Forfeiture Suit: We have already had to amend the suit in Federal District Court in San Francisco to add another seizure. This time the same Solicitor refused to remit a seized lion, Appendix II, and even refused to permit it to be shipped back to Africa as an alternative. The error was made by the foreign government's CITES authorities, not the trophy owner. Those authorities admitted their mistake and issued another permit and offered to accept the trophy back if necessary. The Solicitor would have nothing of it and, true to past practices, again wrote in the denial that she could not remit it if there was any violation, even though it was Appendix II and a mistake by the authorities themselves. Once again the unfortunate hunter was misled into believing that the Solicitor had discretion and authority to remit. The petition for remission process was a sham and was denied.

We have been able to get several other trophies released around the country during the last month as the Solicitors treat trophies as “contraband” inconsistently. Those petitions for remissions were granted contrary to the position in other cases that there is no discretion because the trophies are contraband.

Mozambique Elephant Suit Filed: On February 23, 2009 the Director of USF&WS denied the appeals of the Mozambique elephant import permits dating back to 2000 when the elephant hunting reopened in that country. International Affairs has also failed to process permit applications from el-

ephant taken in the Niassa Game Reserve since it began elephant hunting in 2005. On May 21 Conservation Force filed suit in the Federal District Court in the District of Columbia. The suit is on behalf of those applicants who have been denied, most of which were applications for the Tchuma Tchato Community Wildlife Project in Tete Province. It is also on behalf of those who have taken or want to take elephant in the renowned Niassa Reserve.



The failure to timely grant permits in the Tchuma Tchato project ultimately contributed to the failure of the CAMPFIRE-type project. Those applications were for elephant taken or to be taken in 2000 through 2005, which are years in which Mozambique issued no more than two licenses per year for the whole country. The conclusion by International Affairs that it could not make a non-detriment determination is

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irrational when the quota is so low. Also, the conclusion that it could not make an enhancement determination in the multimillion dollar community project that was established by the leadership of the CAMPFIRE Program from Zimbabwe is also beyond belief. The Tete Province is adjacent to and protrudes into CAMPFIRE districts in Zimbabwe. The project was really an extension of the CAMPFIRE Program into the adjacent country, but the USF&WS dug its heels in from the get-go.

The Niassa Reserve is more than 10 million acres. Its elephant population has been surveyed every two years, and it has doubled in number. The USF&WS should be encouraging and supporting that program under the ESA and processing the permits under the Administrative Procedures Act.

The suit is an important one because it affects far more than Mozambique. The delay practices and denial rationale are contrary to the written Stipulation in *SCI, et al. v. Babbitt*, the original elephant suit yours truly won in the early 1990s. That suit was voluntarily dismissed without prejudice on the basis that International Affairs of the USF&WS would honor the spirit of Resolution 2.11 (Rev.) and would no longer use or adopt the criteria it was proposing. In these permit denials, and the reason for delay with the Niassa applications, the Service has violated that Stipulation. They have been violating it in Zambia, Cameroon and Tanzania as well. This suit will hold them to account for that breach as well as other capricious and irrational conduct. They most certainly have an attitude problem towards trophy hunting and its conservation benefits.

I've perhaps saved the best part for last, though. The suit has been allotted to the same judge as the original elephant suit in the early 1990s. He is now the Chief Judge of the District Court in the District of Columbia and will be asked to enforce the Stipulation arising in the earlier case before him. The suit is available on Conservation Force's web site at <http://www.conservationforce.org/news.html>. - John J. Jackson, III.