



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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Promising Polar Bear Developments: Scientists Stand Corrected

Polar bear populations are not nose-diving as forecasted, and the Government of Nunavut and Inuit hunters and trappers are saying, "We told you so!"

The latest survey of the Foxe Basin polar bear population recently published shows that population to be stable and healthy. That survey had been conducted in September 2009 and repeated in 2010 by the Government of Nunavut. The aerial surveys put the number of bear in the Basin at 2,580, which is more than earlier estimates.

The bear may be labeled "stable" instead of "increasing" only because the "scientists" had underestimated the number in the first place. The scientists had been persuaded to marginally increase their estimates from limited area surveys in the past upon the insistence of the local people, but perhaps not enough. The populations may not be greater in reality; it's just that the count is now more comprehensive. The higher count does at least reflect that the population is stable and certainly that it is not crashing as forecasted.

The "We told you so" may be the real point here. The local stewards of the bear need to be consulted at all stages of management. The Director of Wildlife for Nunavut Tunngavik, Gabriel Nirlungayuk, said there are many more bears than what scientists have been acknowledging for the past 10 years. Even the Inuit estimate has been low, he said. The director said that in the past the university scientists "never talked to locals, and now Inuit are voicing their concerns and frustrations." For example, the Inuit know that polar bear do hunt

DATELINE:
Nunavut



John J. Jackson III

in the summer, which the scientific community still has not documented and thus does not factor into their management recommendations and the listing decision. This is not the first time scientists have made such a mistake. Nirlungayuk cites the bowhead whale study that put the number of whale at 300, even though the Inuit disagreed. "The scientific community listened, came back, and it turned out there was (sic) 14,000 of them out there."

The communities affected by the new survey estimate are Repulse Bay, Chesterfield Inlet, Coral Harbour Kivalliq communities along with Cape Dorset, Iglulik, Kimmirut, Hall Beach and four Nuavik communities.

The hunting quota of 106 in that unit has already been set for this year, and the season began July 1st. Proposals to increase the hunting quota for next year are expected but will have to be submitted to the Nunavut Wildlife Management Board.

Another recently published bear population survey has contradicted the forecasted doom by some for polar bear populations. This survey covered the Western Hudson Bay. That population is the one cited as proof of decline in the Final Rule that caused the bear to be listed as threatened on the ESA. The Western Hudson Bay population was said to have had a "significant" decline of approximately 200 bears over a 22-year period and was forecasted to decline to as little as 400 bear by now. Here at Conservation Force we don't agree with either statement.

To those in the know, this has

always been an exaggeration; first because the reference point used was at that population's apex and was thought to be too high and itself the cause of lowered cub survival and other signs of being above habitat capacity. (Also, the scientists at that time thought the case might be that it was too cold for the bear, and yes, they had the same concern that they have today – only now because it is said to be too warm.) Second, the Churchill population, as it is called, is the most harassed polar bear population in the world. This entails not just giant snow vehicle and helicopter tourists, but the bear were intentionally trapped and translocated daily because their numbers were above the tolerance capacity and management objectives. The higher populations also existed before the removal of the garbage dumps. The Inuit complained that the estimate was too low because the survey patch was too small and unrepresentative. A one-day survey in an adjacent area partially demonstrated that a number of bear said to be missing (bears previously lip tattooed and marked for study) were in fact outside the small area surveyed for the population estimate.

The forecast of doom was that the population would collapse to as low as 400. To the contrary, the most recent survey shows the population to exceed 1,100. The survey area is a bit different,



as the locals advised all along that it should be, so an actual increase cannot be concluded. The population is likely stable and certainly has not crashed as forecasted. It is abundant.

The passage of time and improved survey methodology points to the Inuit being right. If the founding principle of the scientific method is testing the hypothesis, which of course it is, then the forecast of doom is at least premature. The population estimates upon which the quotas have been based may have been lower than need be for some time. Yet others assert that there has been an ongoing overharvest that itself largely explains the past decline, not loss of a few more weeks of summer ice.

On another track, in May the Government of Nunavut published the results of a public opinion poll conducted in the Western Hudson Bay Communities in February and March of 2012. The poll was of residents of Arviat, Baker Lake, Chesterfield Inlet, Rankin Inlet and Whale Cove communities in Nunavut that harvest bear from the Western Hudson Bay polar bear population. The results were interesting.

Most survey respondents indicated that there are "currently 'the most' polar bear," and every respondent in one community said there are "too many polar bear." Most of the people thought the bear was at the preferred level or above the level of their preference, with more believing it was above preference than at preference level. Important to managers, many who preferred fewer bear were willing to tolerate the bear or even more bear if there were benefits to be derived from the bear. We know that well.

A variety of reasons were provided for why people preferred the polar bear population size that they did....Those that preferred 'no' or 'few' polar bears cited that they were afraid of polar bears most often. Those that preferred that 'there are' polar bears tended to cite the benefits of having polar bears. Other reasons that people preferred that 'there are' polar bears were that polar bears are part of nature or their lives, and that polar bears are scary. Amongst those that preferred 'many' polar bears, the benefits of having polar bears was the most common reason. Other reasons that people preferred 'many' polar bears

were that polar bears are part of nature or need to exist. Amongst those that preferred the 'most' polar bears, so that Inuit can harvest many polar bears was one of the more common reasons. Other reasons for wanting the most polar bear were because of the benefits of having polar bears, and for future generations.

Most respondents, Inuit harvesters and the rest of the public, seemed to believe that the polar bear population was above their preferred polar bear population level....Most respondents, Inuit and non-Inuit, also seemed to believe that the polar bear population level was within their tolerance...This seems to suggest that quite a few people were willing to tolerate polar bear population levels that are not at their (lower) preferred level.

Most people were also not concerned about the future of the Hudson Bay polar bear population, but many were concerned about human safety because of the abundance of bear.

On the Congressional front, the legislation to permit US import of those bear taken before the "threatened" listing was made effective cleared the US House of Representatives. It was part of H.R. 4089, called the "Sportsmen's Package." It was also offered in the Senate as an amendment to the Farm Bill (called *The Sportsmen's Act of 2012*) but did not survive. As usual, the Congressional Sportsmen's Caucus led the charge supported by most of the hunting community leadership, including most members of the American Wildlife Conservation Partners (AWCP) who issued a sign-on letter.

You will recall, the only reason those pre-listing bear were not imported is because the Oakland Federal District Court Judge ordered that the listing "be made effective immediately" at the request of the Center for Biological Diversity (CBD) which filed the initial listing petition and suits to keep the



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petition on track. But for that unusual Court Order, the Fish & Wildlife Service (FWS) intended to give the hunters time to complete their imports before making the listing, and said so. Conservation Force and its regular partners were monitoring the litigation and filed an intervention as soon as the CBD made the request to the Court. The Court granted the CBD's motion, issued the Order and dismissed our pending intervention without a hearing on the basis that our

intervention was moot since the Order was already issued. When we objected, the Court held that the hunters "assumed the risk" they would not be able to import their trophies because they knew the listing was pending and was past due. To the contrary, virtually all listings are past due, and the hunters did not know that the Court would override the 30- and 90-day minimum notices the Administrative Procedures Act and ESA legally guarantee. Moreover,

the CBD request that the listing be made effective immediately was not in the suit or pleadings to give hunting interests notice. We still think that the three rights to notice, 1) in the Court rules of procedure (FRCP), 2) in the Administrative Procedures Act (APA – 30 days minimum), and 3) in the ESA (90 days) should have protected the hunters. We fully expect Congress will overrule the Court, so to speak, in due time. ■

Last Brief in Markhor I Suit Filed

We completed the last legal brief in Markhor I in July. The only thing that remains is the oral argument before the three-Judge panel in the District of Columbia in September.

This is the appellate case challenging the dismissal of the first suit to enforce the first downlisting petition filed in 1999. The lower District Court, at the Fish & Wildlife Service's (FWS) urging, had dismissed the case as unenforceable after six years. This was despite the fact that suit was not filed because those that filed the petition to downlist were relying upon promises that it was forthcoming and were waiting in reliance upon positive representations made in that regard. The District Court had ruled that the six-year time limit was jurisdictional and could not be extended even for equitable reasons.

The second part of the case arises from the FWS denying the permits. Part two of the suit was to compel the processing of import permit applications that were as much as 10 years old. The FWS responded by processing the permits of the litigants (all denied) and then convinced the Lower Court to dismiss those claims as moot.

At the appellate level we have made a great number of arguments that the first downlisting petition was valid for more than six years after the FWS should have made a 12-month determination (it had timely made a 90-day determination). Now the Sierra Club has intervened in our favor (yes, Sierra Club, not Safari Club) to argue that the right to a 12-month downlisting determination is such a mandate from Congress that it should survive the jurisdictional challenge.

Of course, we strategically filed a second petition to downlist the markhor (Suleiman straight-horned markhor in the Torghar area of Pakistan) and have reached a settlement of Markhor III over that petition with the FWS that they will make a 12-month finding before July 31, 2012, to be reported to you next month. That was the thing to do, but now FWS is arguing the settlement moots this part of the appeal because there will be a 12-month determination under the second petition that will satisfy the first petition as well.

In regard to the failure of the FWS to process permits for 10 years, we argued that the District Court (Lower Court) should not have dismissed that claim when the FWS processed (denied) the permits because the claim asked for a declaratory judgment that the delay was illegal and for an order that permits be issued timely in the future. The FWS is arguing that the permit application claims were mooted by the processing (denying) and that the Court should not be telling the Agency how to operate by ordered "programmatic"

changes of operation. We in turn are arguing an exception to mootness, which is that the chronic delays have been misbehavior that is "capable of repetition but evading review" unless the Court stops it. Of course, our line of cases have documented that the FWS will let permit applications rot for five to 10 or more years until compelled to review them. (As was the case with Mozambique and Zambia elephant, Pakistan markhor, wood bison, etc.)

We also continue to argue that the permit processing practices of the International Section of FWS, particularly the Division of Management Authority, deprive trophy owners of constitutional "due process" of law. The FWS argues that there is no fundamental right to a permit or fair treatment in permit processing.

This may all seem rather technical to readers, but it is best you know what your government is doing to you and the position they are taking on fundamental rights of fair treatment and accountability. They are not giving an inch, and they are not hunters' friend. The fundamental problems within FWS have been exposed through the litigation. According to the FWS, they don't have to process your permits, you have no fundamental right to fair treatment in the process and you have no protected ownership interest in your property (trophy). Think about it.

Sometimes we lament we did not file suits sooner, during prior administrations. At the same time, we know that prior administrations got us here and knew well what a fix we would be in. ■



Power Outages – Shortfalls

Much like electric power outages, two recent funding shortfalls have left Conservation Force without the resources we needed. In both instances no one else provided the needed power either.

The first concerned the appeal of the Oakland Judge’s Order dismissing Conservation Force’s motion to intervene and represent hunters with pre-listing polar bear. We appealed that decision on the basis it was illegal and unconstitutional not to give the hunters a reasonable period of notice before making the listing effective. The three-Judge panel never reached the merits. The appeals panel held it was premature to appeal before the whole

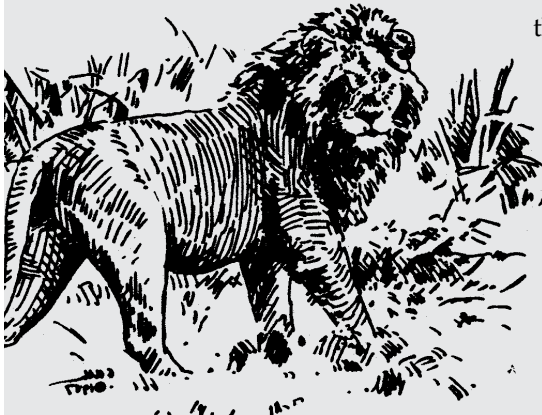
listing case was final (years later). Well, the case challenging the listing was removed to the District of Columbia and consolidated with a number of other cases. When it was finally decided more recently, we had a 60-day window to file a second appeal of the original Oakland Judge’s Order that it be made effective immediately. We did not file an appeal. We gave it up because we were already maxed out, not getting enough support, and we were assured by the Congressional Sportsmen’s Caucus that it would be fixed by Congress in due time. Although it remains a troubling decision for the fighters that we are, we flat out did not have enough electric power to go around.

We also did not timely complete the national lion action plans for key countries in west and central Africa. We foresaw the critical need for the plans as the war over African lion hunting began to heat up. With partners like IGF of Paris, we were able to largely complete the status reviews in the critical countries in preparation for the planning workshops, but fell short of being able to fund the

planning workshops that were needed. Consequently, pivotal countries in west and central Africa don’t have functional management action plans for lion.

This one we did not give up! Instead, it just fizzled out when the donations were not forthcoming. Unfortunately, the forecasted attack on lion hunting and clamor for ESA and CITES Appendix I listings have materialized as expected. The status and management of lion in those two regions of Africa, much like the elephant status there a couple of decades ago, is proving to be a problem. Worse, the important role of the hunter has not proven to be the force we had hoped it would be.

There has been some other near power outages narrowly avoided this year. Please help us cover the bases. No one else was covering the two bases mentioned above. If you want to help support Conservation Force, the donations are tax deductible. Mail your contribution and full identification for tax acknowledgment purposes to Conservation Force at PO Box 278, Metairie, LA 70004-0278. ■



Nevada Black Bear Not Listed

On July 5th, the Fish & Wildlife Service (FWS) denied the petition of some Nevada groups to list the Nevada black bear as threatened. The FWS, primarily the Nevada office of FWS, made a negative 90-day finding, so there will be no further review as such. The petition was pending less than a year as it was filed September 6th, 2011.

The FWS cites some interesting statistics. There are 16 subspecies of black

bear in North America. Collectively, they number between 800,000 and 900,000 with about 400,000 in the United States. (Conservation Force estimates them at over one million.) The Nevada subspecies also occurs in California and south central Oregon. Known as the Sierra Nevada population, it is estimated at 10,000-15,000 individuals. The Nevada authorities estimate the bear is expanding its range and growing at the rate of 16 percent per year! In short, it is not declining as represented. For

much more information on these bear, see *Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List a Distinct Population Segment of the American Black Bear in Nevada as Endangered or Threatened*, 77 FR 39670-39674, July 5, 2012.

The Louisiana black bear subspecies was listed as threatened in June, 1990 in Louisiana, Mississippi and Texas. The FWS declined to list the Pennsylvania black bear in 1983. ■

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