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**“SERVING THE HUNTER WHO TRAVELS”**


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*“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**

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**DATELINE: WASHINGTON, DC**

**News Analysis**

**The Argali Case: Court Hears Mongolia's Appeal**

**Y**ou may recall that the trial judge in the Federal District Court for the District of Columbia did not allow Mongolia's Natural Resources Department to intervene in the Argali case. The antis raised every conceivable issue to prevent Mongolia from participating. Their wild assertions and Red Herrings made a lot of work for Conservation Force. They succeeded in persuading the trial judge to deny the Mongolian motion to join in the suit, even though the trial judge let absolutely everyone else join in the case. We filed an appeal on behalf of Mongolia. When you take on a responsibility, it is necessary to see it through regardless of the cost and burden.

Conservation Force also represents the Foundation for North American Wild Sheep; Grand Slam/OVIS; Raul Valdez, Ph.D.; Bart O'Gara, Ph.D.; James Teer, Ph.D.; and some individual

conservation-minded Argali hunters - Ron Bartels, Douglas C. Stromberg, Ben Seale, Clark S. Ullom and Lee G. Lipscomb. Conservation Force also represents itself. Many others have wanted to join the suit and/or have supported the overall Argali effort.

The antis have never before filed a suit to directly prohibit the importa-



tion of hunting trophies. The antis did intervene in both the 1991 Elephant and 1992 Argali suits. (Yours truly, John J. Jackson, III, was the trial counsel for hunting interest in those cases too.) They have also influenced the trophy import practices of the US Fish & Wildlife Service (USFW&S) through formal “notices of intent to sue” in-

volving permitting of everything from polar bear to cheetah. Because this Argali case is the first real suit to directly stop the importation of hunting trophies, it is the first occasion for a country like Mongolia to intervene as a defendant to protect its own wildlife management program.

We appealed the trial courts denial to the federal appellate court for the District of Columbia because of the important principle involved. We compiled an Appendix of the trial court's records, and briefs were filed by both sides. On Friday, February 21, we made the oral argument before a three-judge panel of the Appellate Court. Mongolia and the hunting world's interest were represented by yours truly, John J. Jackson, III, of Conservation Force. The Fund for Animals and other antis were represented by Howard Crystal of the law firm Meyer and Glitzenstein. That firm has long represented anti-hunting interests.

I opened by telling the court that I was the *pro bono* counsel for the greatest wild sheep conservation organizations in the world and in the history of the world - organizations that have no equal in wild sheep conservation. Then

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I argued that Mongolia should be allowed to participate in litigation that so directly impacts its own sovereign resource. It is the sovereign owner of the Argali and its own conservation program is what is at stake. No one has greater or more direct interest than that. All the other lesser interests were allowed to intervene, but the trial judge excluded the party with the greatest interest!

I also argued that the Endangered Species Act (ESA) expressly provides that the USF&WS shall “take into account” the conservation program of the foreign nation in the listing process and shall “encourage” the “conservation programs” of foreign nations. The trial judge (at the coaxing of the Antis) has undermined that Congressional intent by excluding Mongolia as a par-



participant in the suit involving Mongolia’s own wild sheep that, of course, are largely dependent upon Mongolia for their survival. Mongolia should be a participant. We want it to care about, and for, its own resources. We do not undiplomatically want to send the wrong message that the ESA is simply an internal, domestic concern of the USA, because it is not. Also, the other interveners need Mongolia’s insight. We need Mongolia to help decipher the administrative record that has collected over a decade, much of which is in the Mongolian language. Who can advise us better than Mongolia what its documents in the administrative record mean? It was error for the trial court to send a message that Mongolia’s participation is unwanted and their interest is of no concern under the ESA. The unrea-

soned trial court decision “undermines” the operation of the Endangered Species Act and discourages Mongolia from even caring.

The oral argument on behalf of Mongolia was a serious responsibility, and it went well. The attorney for the Antis, Howard Crystal, argued that Mongolia’s interest had to be supported by proof such as sworn affidavits. One judge remarked that the burden was on the Antis challenging the standing of the intervener and that our statement in the appeal brief that Mongolia’s interest is “self-evident and speaks for itself without further proof” is true. After all, Mongolia’s Natural Resources Department is the managing authority most responsible for the survival of the sheep. Another judge remarked that “ownership” is the epitome of interest.

Howard Crystal argued that the US Justice Department already represented Mongolia’s interest adequately, to which I replied that there are and continue to be numerous conflicts between the USF&WS and Mongolia’s Natural Resource Department that make their positions antagonistic. For example, we take the position that it was illegal for the USF&WS to even propose the listing of Mongolia’s Argali as “endangered”; therefore, it cannot be the basis for a legitimate endangered listing Final Rule that the Antis have asked the trial court to order. One of the claims of the Antis is to compel the “endangered” listing that the USF&WS has proposed. The USF&WS was proposing the endangered listing of Mongolia’s argali, and Mongolia was opposed to that proposed rule. The very proposal was a conflict with Mongolia’s interest, *i.e.*, a conflict of interest. The Justice Department cannot represent two conflicting interests.

Howard Crystal argued that the same lawyer (yours truly) represented the other interveners and Mongolia; therefore, there is no need to name Mongolia as well. I replied that Mongolia’s interest was the greatest, thus it should come first. Mongolia’s full participation was needed to understand the administrative record and to “encourage” Argali conservation as

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Congress intended. No one can stand in Mongolia's shoes. Nor is anyone else obligated to conserve and protect its Argali, as Mongolia's Natural Resources Department is under its own laws.

One of the three judges of the panel of the Appellate court asked what effect the Mongolian appeal would have on the pending case before the trial court if Mongolia was successful in its appeal. The argali case in the trial court is nearly finished because all the briefs were filed by everyone in early February. If Mongolia is added at this late date, we do not intend to file any additional brief on behalf of Mongolia that would delay the trial court decision. We told the Appellate panel that the suit has already had too great a “chilling effect” on the hunting program to prolong the case any longer than necessary. Mongolia's argali conservation program is wholly dependent upon the revenue and incentives arising from the hunting that itself is dependent upon the ability of US hunters to import their trophies, which is what is at issue. The suit will determine the revenue, and thus the operating capacity of the Natural Resources Department of the Ministry. It imperils the very survival of Mongolia's argali. If permitted to intervene, Mongolia will participate in any appeal of the trial court decision and will help us interpret the administrative record if and when the case is appealed. However, the lower trial court's briefing does not have to be reopened and delayed. We did not seek a stay order of the trial court proceeding by the appellate court until the appeal was concluded. We deliberately appealed in such a way that it would not delay the case, yet would establish the important principle that the affected foreign nation can participate in litigation of this kind.

Conservation Force continues its *pro bono* legal services to the hunting and conservation world. Yours truly is the only unpaid attorney in the case. We filed most of the motions in the case, including Mongolia's appeal, and we represent the greatest wild sheep-specific conservation organizations in the world. It is an honor and a privi-

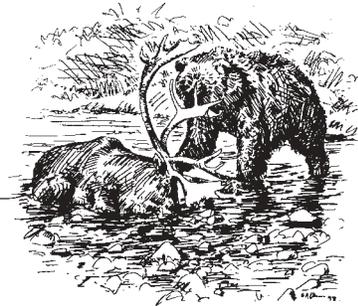
lege. We will keep you advised of developments in both levels of the Argali litigation.

If you would like to receive a transcript of the oral arguments before the three-judge panel, contact Conservation Force assistant Karen at 504-837-1233; or at [jjw-no1@att.net](mailto:jjw-no1@att.net).

**DATELINE: BRITISH COLUMBIA**

**News Analysis**  
**Antis Grizzly Claims**  
**Are Called “Unfounded”**

**T**he long awaited *Final Report* of the Independent Grizzly Bear Scientific Review Panel has cleared Grizzly bear hunting in British Columbia, Canada. The 90-page report entitled *Management Of*



*Grizzly Bears In British Columbia: A Review By An Independent Scientific Panel* was submitted by the six-member panel On March 6 to the British Columbia Minister of Water, Land and Air Protection.

The report states that “[o]verall, the Panel concludes that current protective measures, combined with some additional measures listed in the recommendations section of this report, offer a robust conservation strategy for grizzly bears. Our confidence in this conservation strategy is enhanced by the recognition that the British Columbia government has access to a group of engaged and qualified professionals that are committed to the long-term conservation of grizzly bears. Accordingly, we do not see any justification for imposition of a ban on imports of bears (e.g., by the European Union)

that are legally harvested in British Columbia.”

“The panel's evaluation of grizzly bear harvests did not reveal any compelling evidence of over-harvest in the province as a whole or in any GBPUs (Grizzly Bear Population Units).” Moreover, the Panel found the Ministry's population estimates of 14,000 to be reasonable. The anti-hunters' estimates were wholly rebuffed. “[W]e take issue with the critics who continue to endorse estimates of about 6,000 bears (or even 4,000), based on long-defunct data (unreliable 1972 guesstimates of 5,000 - 8,000), claiming that . . . (they) are just as likely as the newer estimates.” “Although these low estimates - which have been widely cited in the public media - make an appealing argument for those concerned about over-hunting of bears and inherent uncertainties in bear management, they do little more than unfairly muddle the picture. If these old estimates had been higher than current estimates, it is likely that they would have faded from memory, which should be the situation in any case.”

The government of British Columbia imposed a three-year moratorium on grizzly bear hunting in February 2001. It announced that during the hunting moratorium an independent panel of bear experts would be appointed to review the province's grizzly harvest management strategy. The composition of the panel was based on recommendations from the International Association for Bear Research and Management (IBA). No panelist was employed by the government agencies in British Columbia and none were financially linked to such agencies. This past July, the newly elected British Columbia government lifted the hunting moratorium (it was closed that one Spring), but supported the continuation of the independent review panel.

The Scientific Review Group of the European Union was also brought into the picture when it recommended the banning of import of grizzly bear trophies from British Columbia into European Union member countries. It subsequently made a favorable finding,

but some European Union member countries have been awaiting the promised Panel Report. Moreover, the Canadian Wildlife Service was challenged to stop issuing CITIES trophy export permits. The Canadian Wildlife Service refused but promised to re-evaluate when the Panel review was complete. Consequently, the Ministry of British Columbia, the CITIES Authorities of the Canadian Wildlife Service, the European Union’s Scientific Review Group and others have all been awaiting this Final Report from the Panel.

The Report is not all good news. The panel, as expected, made a number of expert “recommendations”. Many areas have been closed and will remain closed to grizzly hunting. The panel “recommends” closure in additional areas. It also recommends lowering the quota from six percent of the population in each grizzly unit to five percent to reduce the risk of the “inherent” uncertainty of population estimates and unknown, non-hunter-caused mortality. That one percent reduction at “the upper end of the scale, (*i.e.*, from six percent to five percent)” has the bottom line effect of reducing by 17 percent the number of bears that can be taken. Hence, it causes a 17 percent reduction in hunting opportunity.

The Panel recommends greater restrictions on human access to wild lands and that this be made part of the grizzly planning and management program. “Management of access is a major issue across North America. Efforts to manage access in British Columbia will benefit many species of wildlife as well as grizzly bears. Increased forest access can cause an increase in human-grizzly encounters and a reduction in habitat effectiveness in the vicinity of active roads and trails.” “[T]he collective work on this topic lends strength to the fundamental conclusion that access generally displaces grizzly bears.” “Hunting conducted under properly managed game management principles rarely poses a threat to bear populations; chronic habitat changes and increased human access, however, can have serious deleterious effects. One such effect is in-

creased mortality as a consequence of increased road development and access.”

The panel also recommended the creation of a greater number of protected areas (no hunting) to ensure a closed “Grizzly Bear Management Area within each bioclimatic region of the province.” “Refuges that are closed to hunting, where bears occur at near



carrying capacity, can be important sources of emigrants that can buffer over-harvesting in surrounding areas,” the Panel reasoned.

These non-hunting sanctuaries are in addition to the 4.5 million hectares of national and provincial parks. Hunting is not allowed in the national parks and not allowed in some provincial parks. Hunting is also not allowed

when grizzly populations are less than “fifty percent of their habitat capability”, *i.e.*, carrying capacity of the habitat. There are 11 of those units. Additionally, grizzly bear units that are isolated from other units and have a population estimate of less than 100 bears are closed due to their “inherent vulnerability.” Hunting has already been closed indefinitely in 24 percent, and temporarily in another 13 percent of the grizzly’s historic range, 37 percent of the total. At present, a total of 82 management units (45 percent) have been closed to grizzly bear hunting while 101 remain open.

Grizzly bears have been eliminated from 11 percent of their historical range in British Columbia, which means they continue to exist in 89 percent of their historical range. The bears are really secure in British Columbia because 95 percent of all forest land is government-owned.

The European Union should learn a lesson here about the Environmental Investigation Agency (EIA) and the way it uses subterfuge and unreliable statistics to push its points. The EIA was the prime mover in the closure of grizzly hunting in BC and the imposition of an import ban by the EU. More broadly, anyone in the hunting community who is still apathetic about the anti-hunting movement worldwide should also take a lesson here.

The Chair of the Grizzly Bear Scientific Panel is quoted by the Ministry as saying, “We are pleased that the province has accepted our recommendations to further improve a bear harvest management system that is arguably already one of the best in North America.” Despite the recommended 17 percent reduction in quotas in each management unit, closure of more areas to hunting and new restrictions on access, we at Conservation Force do not expect the anti-hunters to go away. Nor is grizzly bear survival assured by these recommended refinements, because hunting never threatened the bear in the first place. The Panel Report can be viewed at <http://wlapwww.gov.bc.ca/wld/> (Click on “Grizzly Bear Conservation Strategy”).  
– John J. Jackson, III.

#### Conservation Force Sponsor

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