



THE HUMANE SOCIETY
OF THE UNITED STATES



HUMANE SOCIETY
INTERNATIONAL

November 23, 2015

Mr. Timothy Van Norman
Chief, Branch of Permits
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041

***Re: Bontebok Trophy Import Permit
(PRT-78418b)***

Dear Chief Van Norman,

The Humane Society of the United States (HSUS) and Humane Society International (HSI) strongly urge the U.S. Fish and Wildlife Service to deny the permit application from Christopher Shaw (PRT-78418b) to import Bontebok hunting trophies from South Africa. *See* 80 Fed. Reg. 64441 (Oct. 23, 2015). There is simply no evidence to support an enhancement finding for this application, and granting this permit would violate the Service's duties under the ESA and implementing regulations. 16 U.S.C. § 1539; 50 C.F.R. §§ 17.21, 17.22. Thus, the Service must deny this application.

ESA Permitting Standards

Pursuant to the ESA (16 U.S.C. § 1538(a)) and Fish and Wildlife Service regulations (50 C.F.R. §§ 17.21, 17.22), once the Service lists a species as endangered, as it did with the Bontebok (*Damaliscus pygarrus dorcas*) nearly 40 years ago (41 Fed. Reg. 24062 (June 14, 1976)), the species is protected from import unless such action will "enhance the propagation or survival of the affected species" or is for scientific purposes consistent with the conservation purpose of the ESA. 16 U.S.C. § 1539(a)(1)(A); 50 C.F.R. §§ 17.21, 17.22. As the plain language of the statute makes clear, enhancement authorization may only be issued for activities that *positively benefit* the species in the wild. *See also* FWS, *Ensuring the Future of the Black Rhino* (Nov. 25, 2014), at <http://www.fws.gov/news/blog/index.cfm/2014/11/25/Ensuring-the-Future-of-the-Black-Rhino> (acknowledging that the ESA enhancement standard is more stringent than the CITES non-detriment standard and that the trophy import permits should only be issued if the Service finds "that the [animal] is taken as part of a well-managed conservation program that contributes to the long-term survival of the species"); U.S. Fish and Wildlife Service Handbook for Endangered and Threatened Species Permits (1996) (making clear

that an enhancement activity “must go beyond having a neutral effect and actually have a positive effect”).

Enhancement authorization must be granted on a case-by-case basis, with an application and opportunity for meaningful public participation. 16 U.S.C. § 1539(c); *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 119 (D.D.C. 2009). Before the Service can issue authorization to conduct otherwise prohibited acts, it must find that: (1) the permit or registration was “applied for in good faith;” (2) the permit or registration “will not operate to the disadvantage of such endangered species;” and (3) the proposed action “will be consistent with the purposes and policy” of the ESA (i.e., *conservation*¹). 16 U.S.C. § 1539(d). As explained by Congress, these requirements were intended “to limit substantially the number of exemptions that may be granted under the act.” H. R. Rep. No. 93-412 p. 17 (1973) (emphasis added). Implementing regulations further require that applicants provide detailed information about the animals, persons, facilities, and actions involved in the otherwise prohibited activity. 50 C.F.R §§ 17.21(g), 17.22; *id.* § 13.21(b)(2)(3) (authorization may not be issued if applicant “failed to disclose material information required” or “failed to demonstrate a valid justification”).

In deciding whether to issue an enhancement permit, the FWS must consider “[t]he probable and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;” “[w]hether the permit . . . would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;” “[t]he opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application;” and “[w]hether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.” 50 C.F.R. § 17.22(a)(2).

Application Deficiencies

This application fails to meet both the procedural and substantive requirements for issuance of the requested import permits.

Insufficient Information

As an initial matter, the Federal Register notice for this permit indicates that Mr. Shaw is seeking permission to import “a sport-hunted trophy of one male bontebok” – however, the application makes clear that Mr. Shaw is seeking to import the two Bontebok trophies (“2

¹ The primary purpose of the ESA is to “provide a program for the conservation of such endangered species.” 16 U.S.C. § 1531(b). The term “conservation” means “to use...all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary” – i.e. to recover the species in the wild so that it may be taken off of the list of endangered species. 16 U.S.C. § 1532(3).

full skins and 2 skulls with horns”). Because this application was improperly noticed, the Service cannot issue this permit. *See* 16 U.S.C. § 1539(c).

HSUS and HSI are very concerned that the application form the Service uses for Bontebok trophy imports (#3-200-22) does not even require the applicant to provide a justification for its otherwise prohibited actions. This is in contrast to other ESA import permits, for which the applicant (rightfully) has the burden to demonstrate enhancement. Without providing such rationale, the public is not afforded the opportunity to meaningfully comment on this application as required by 16 U.S.C. § 1539(c). Similarly, although HSUS has requested that the Service publicly release its most recent enhancement finding for Bontebok trophy imports for consideration during the comment periods on such applications, the Service has not do so, depriving the public of essential information to meaningfully participate in the comment period.

Mr. Shaw also fails to meet the substantive requirements for the Service to make an enhancement finding, as required by both the ESA and FWS regulations. In fact, the applicant’s activities would not enhance the survival of the species, would not be consistent with the conservation purpose of the ESA, and would act to the detriment of the Bontebok. Therefore, the Service must deny this application for enhancement authorization.

➤ Unmanaged Breeding

The Bonteboks at issue in this application appear to have been killed on private land, but the application contains conflicting information about where the hunt took place. The application identifies the landowner as Mnr Andre Steyn and the location as Roodeheuvell; however, the hunting permit issued to Mr. Shaw appears to apply to “the farm Wag n Bietjie Nature Reserve” (for six Bontebok) and it is unclear if Mr. Shaw hunted at more than one location (or if he killed more than the two endangered Bontebok he is seeking to import). Further, the certification provided by Mr. Shaw for Roodeheuvell is not dispositive as to enhancement, as it does not reveal the sample size of animals tested to confirm certification, calling into question its credibility, and does not indicate the total herd size (making it unclear what proportion of the herd would be lost if Mr. Shaw shot six individuals).

This application provides no evidence that the ranch’s breeding efforts could or would enhance the survival of wild Bonteboks. *See* 77 Fed. Reg. 431, 434 (Jan. 5, 2012) (“While the Service does believe that captive breeding can provide a significant benefit to endangered species, such benefits can only be realized when the breeding program is scientifically based and conducted in a manner that contributes to the continued survival of the species....However, breeding just to breed, without adequate attention to genetic composition and demographics of the breeding population, may not provide a clear conservation benefit to an endangered species.”).

This is particularly true given the serious concern with hybridization in Bontebok herds maintained on private property. See Anna M. van Wyk et al., *A hybrid dilemma: a molecular investigation of South African bontebok (Damaliscus pygargus pygargus) and blesbok (Damaliscus pygargus phillipsi)*, Conservation Genetics Vol. 14(3), 589-599 (2013) (“The identification of pure and admixed populations is key to sound biodiversity conservation management and practices. ...[In this] [f]irst molecular analyses on pure bontebok and blesbok as well as putative hybrid populations and samples of unknown purity[,]...[h]ybridization was detected in 33 % (40 of 121) of the samples with unknown purity.”) (attached). Hybridization between Bontebok and Blesbok can have negative impacts on Bontebok conservation, including reduction of fitness in hybrids, alteration in the genetic structure of populations and the interference of locally co-adapted gene complexes.

Similarly, Cousins et al. (2010) (attached) describe South African game ranches as “businesses first and foremost, competing to attract customers” and find that private game ranches in South Africa conflict with conservation principles including through selective breeding of animals for trophy hunting and intensive captive breeding programs that can lead to inbreeding. HSUS and HSI are particularly concerned that the locations where Mr. Shaw hunted are not in the native range of the Bontebok (which is endemic to the Western Cape), which raises the question of whether the breeding by this farm contributes to the introduction of non-native species and facilitates hybridization and displacement of indigenous species.

➤ Captive Hunting Is Not Enhancement

Captive hunting of endangered animals and the trade of the animals’ body parts as trophies can have a negative impact on wild populations. The Service itself has recognized that “uses of captive wildlife can be detrimental to wild populations” because “consumptive uses,” including captive hunting, can “stimulate a demand for products which might further be satisfied by wild populations.” 44 Fed. Reg. 30,044, 30,045 (May 23, 1979). Indeed, for trophy hunters, the rarer the trophy, the more valuable and expensive it is, and the greater is the prestige. See Courchamp F, Angulo E, Rivalan P, Hall RJ, Signoret L, et al. (2006) *Rarity Value and Species Extinction: The Anthropogenic Allee Effect*. PLoS Biol 4(12): e415. doi:10.1371/journal.pbio.0040415.

There is abundant evidence that the existence of legal markets for endangered species can both encourage and facilitate poaching of those species. See Valerius Geist, *How Markets in Wildlife Meat and Parts, and the Sale of Hunting Privileges, Jeopardize Wildlife Conservation*, CONSERVATION BIOLOGY, Vol. 2, Issue 1 at 16 (Mar. 1988) (U.S. wildlife conservation has been “based on three primary policies ... 1) the *absence* of market in the meat, parts, and products of [wildlife,] 2) the allocation of the material benefits of wildlife by law, not by the market place . . . , 3) the prohibition on frivolous killing of wildlife”); David M. Lavigne, et al., *Sustainable utilization: the lessons of history*, THE EXPLOITATION

OF MAMMAL POPULATIONS 251, 260 (Victoria J. Taylor *et al.* eds., 1996) (establishment of “legal markets for valuable wildlife product . . . provide[s] incentives for poaching [because] when the prices of wildlife products are sufficiently high, they also attract criminal elements into poaching, making wildlife protection not only increasingly difficult but also dangerous”); Lavigne, *et al.*, at 258-260 (“Generally, putting a price on dead wildlife almost invariably leads to over-exploitation and increases the ‘extinction potential’ of target species”); Hunter, *et. al.*, INTERNATIONAL ENVIRONMENTAL LAW & POLICY at 1035 (Foundation Press 1998) (Excerpt) (“Trade is responsible for an estimated 40% of vertebrate species facing extinction. Ironically, market forces can exacerbate the threats from illegal trade, for as species become rarer their value on the market increases to reflect this scarcity, increasing the incentive for further poaching”); *see also* Valerius Geist, *North American Policies of Wildlife Conservation*, WILDLIFE CONSERVATION POLICY (Geist and McTaggart-Cowan eds 1995). Further, the Service has explicitly recognized that some of these endangered species are specifically targeted by “non-resident hunters” who seek to obtain “trophies” of these exotic wild animals. 70 Fed. Reg. 52319, 52321.

The Service cannot sanction such actions that are anathema to the letter and intent of the ESA, the purpose of which is to “provide a program for the conservation of such endangered species.” 16 U.S.C. § 1531(b); *see also Humane Society v. Kempthorne*, 481 F. Supp. 2d 53, 62 (D.D.C. 2006) (enjoining an FWS program allowing lethal take of endangered gray wolves, holding that: “[t]he language ‘propagation or survival of the affected species,’ is on its face, antithetical to the killing of 43 members of an endangered species barring some direct and immediate danger imposed by the individual animals killed to other members of the species.”) (vacated as moot); *Fund for Animals v. Turner*, 1991 WL 206232, at *7 (D.D.C. Sept. 27, 1991) (rejecting FWS’s argument that hunting threatened grizzly bears promotes conservation by creating wariness of humans).

Because of its inherently negative conservation impacts, canned hunting of captive endangered species violates the plain language and purposes of the ESA and its implementing regulations. Indeed, the herd of Bontebok at Bontebok National Park contains approximately 250 individuals and also occurs in other areas within its natural range, which further calls into question the need for captive hunting ranches at issue in the application here to benefit Bontebok conservation. *See* <http://www.iucnredlist.org/details/30208/0>.

➤ Donations Are Not Enhancement

The ESA requires a direct link between the authorized action (the import) and the required effect (enhancement). *See* 58 Fed. Reg. 32,632 (June 11, 1993) (questioning “whether there is a *direct cause and effect relationship* between education through exhibition of living wildlife and enhancement of survival in the wild of the species exhibited”) (emphasis added). The plain language of the ESA only allows FWS to permit an “otherwise prohibited action” if *that action* enhances the species’ survival. 16 U.S.C. § 1539(a)(1)(A). Here, the

“otherwise prohibited” action that the Service would be permitting – import of a hunting trophy – is not carried out for the purpose of enhancing the species; rather, the action is undertaken solely for the personal benefit of the hunter and the private game ranch.

The Service frequently issues permits to kill or import trophies of listed species based on a theory that money derived from the hunt contributes to conservation. But here, there isn’t even a claim of financial contribution to conservation. Thus, this application fails to meet the requirement that applicants to provide a “full statement of why the permit is justified.” 50 C.F.R. § 17.22(a)(1)(vii).

Information from the Service’s Files Does Not Support an Enhancement Finding

The Service does not appear to have made an enhancement finding for Bontebok trophy hunting since 1997 (see attached). This finding is outdated (for example, it does not take into account the best available scientific evidence on Bontebok hybridization) and cannot form the basis of the case-by-case finding required for each of these permits.

That finding claims that “South Africa is effectively conserving and managing the bontebok population throughout its range.” But surely the South African management regime has undergone changes in the last 20 years, such that a new analysis of that program is warranted.

Similarly, the 1997 finding states that there were an estimated 2,500 Bonteboks in South Africa in 1990. This population status is 25 years old and can no longer be relied on for the Service to make an enhancement finding.

Further, the 1997 finding states that the South African management plan in existence at that time “allows for the controlled culling of excess animals in order to enhance the survival of such herds. Because of economic benefits generated by sport-hunting, the incentive for ranchers to acquire and then maintain the genetic purity of their herds is well established. It is expected that increases in both the number of registered herds and the bontebok population as a whole will continue under this program.”

It would be arbitrary and capricious for the Service to issue these permits based on this unsupported reasoning. First, there is no evidence in the record that this system has improved the conservation status of the subspecies, as claimed in the 1997 finding. More importantly, the entire concept of killing animals to save them, and the purported economic benefits created by such activity, is highly controversial. This is particularly true here where the herds are maintained by well-to-do land owners (in contrast to the arguments made about trophy hunting of wild animals living adjacent to impoverished communities). Finally, as noted above, the concept of maintaining genetic purity has been cast into doubt by the Conservation Genetics study on hybridization cited above.

Indeed, the May 2015 South Africa CITES non-detriment finding for Bontebok (https://www.environment.gov.za/sites/default/files/docs/ndf_bontebok.pdf) states there are 2,177 Bontebok in the Western Cape (in or near the natural range of the species). And there are 4,985 outside of that area. The finding states that the main threat to the subspecies is the large number of highly fragmented and small subpopulations in the absence of meta-population management. It further states that there are no quotas for export of Bontebok hunting trophies and that hunting of the species on private land is “not regulated or monitored”. The finding states that “the effects of harvesting (on heterozygosity and fitness for example) are not currently monitored.” Furthermore, “the national management system for bontebok is informal as there is no set structure with activities measured against a large adaptive framework. In some cases local management plans are available but there is no approved national plan that is aimed at managing the genetic integrity of bontebok.” South Africa admits, given this, that legal local and international trade in live animals and the export of hunting trophies at present poses a moderate risk to the survival of this subspecies in South Africa ... This moderate risk however is mostly due to a lack of management and monitoring of bontebok off-takes.”

Therefore, HSUS and HSI strongly urge the Service to deny this application and to conduct a comprehensive evaluation of Bontebok hunting in South Africa.

Pursuant to the Service’s regulations (50 C.F.R. § 17.22(e)), HSUS and HSI hereby request ten days advance notification (via email, afrostic@humanesociety.org) prior to the issuance of these permits. Additionally, if the Service decides to issue these permits, please include with such notice a copy of the individualized enhancement finding for the applicant.

Sincerely,



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