

# **Committee on Resources**

## **Subcommittee on Fisheries Conservation, Wildlife and Oceans**

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### **Statement**

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#### **Testimony on H.R. 529**

#### **Regarding Importation of Certain Wildlife Items**

**Presented by Wayne Pacelle**

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**The Humane Society of the United States**

**Before the House Committee on Resources**

**Subcommittee on Fisheries Conservation, Wildlife and Oceans**

**June 10, 1999**

On behalf of The Humane Society of the United States (HSUS), the nation's largest animal protection organization with more than 7 million members and constituents, I offer testimony in opposition to H.R. 529, a bill to require the U.S. Fish and Wildlife Service (Service) to approve a permit required for importation of certain wildlife items taken in Tajikistan. The HSUS urges the Committee to reject this legislation as inimical to the conservation purposes of the Endangered Species Act and as a harmful precedent, in which the Service's regulatory authority would be trumped by the Congress for reasons relating to politics, not science or conservation.

Argali sheep are the largest of the world's bighorn sheep, with some sheep weighing up to 310 pounds and possessing horns with curls exceeding 80 inches. During recent decades, they have suffered from a variety of human-caused threats to their survival, including local poaching for meat and hides, international trophy hunting, competition with livestock, disease threats from domestic sheep, and extreme fragmentation of habitat. The Tajikistan population of argali declined from 70,000-80,000 in 1976 to only 10,000 - 12,000 in 1989 (Sapozhnikov 1994).

The threats to the survival of the argali were so severe that the Service listed the species on the list of threatened and endangered wildlife in 1993. The species was "split listed," with most argali populations listed as "endangered," while populations in three countries -- the Republic of Kyrgyzia, Tajikistan, and Mongolia -- were classed as "threatened." The agency made it clear that "[t]he current decision to assign threatened, rather endangered, status to those populations was made by a very narrow margin...." (emphasis added)

For the populations in the Republic of Kyrgyzia, Tajikistan, and Mongolia, the Service also adopted a "special rule" which allows for the importation of argali trophies from the three countries provided that

the Service makes a finding that the import will enhance the survival of the species and issues an import permit accordingly.

The special rule also provides that the import of "trophies" from the three countries would be allowed without an import permit or an enhancement finding once the Service had received from the governments of the three countries "properly documented and verifiable certification" that:

a) Argali populations in these countries are sufficiently large to sustain sport hunting; b) regulating authorities have the capacity to obtain sound data on these populations; c) regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them as such; d) the habitat of these populations is secure; e) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations; and f) funds derived from the involved sport hunting are applied primarily to argali conservation.

Later in 1993, the Service published a proposed rule to upgrade the status of the argali in Republic of Kyrgyzia, Tajikistan, and Mongolia as "endangered," again citing that the earlier split listing decision had been made by a narrow margin. Though the ESA requires a final decision within a year of a proposed rule, no decision has been made, even though six years have passed. In a recent meeting between Service officials and representatives from The HSUS, the Service indicated it would be undertaking a new look at the status of the argali throughout its range. The HSUS strongly supports an upgrade of these populations from threatened to endangered based on the health of the populations and imminent threats to their survival.

While the U.S. does not have the ability to control many human-caused mortality factors in foreign countries, one source of mortality is largely within its control: trophy hunting by Americans. Simply put, few Americans will hunt these threatened and endangered animals if they cannot import the trophy into the United States. Thus, import restrictions are a valuable conservation tool in checking human-caused mortality.

The HSUS believes that the Service's granting of any permits of sport-hunted trophies from threatened or endangered species is not supported by a clear reading of the ESA. Indeed, the Service has not allowed the import of any sport-hunted trophies from free-ranging populations of species listed as "endangered." There are, however, import allowances provided for a number of species listed as threatened, including the African elephant, the leopard, and the argali.

We do not believe that the agency could ever make the necessary finding that permitting the import of argali trophies further the "conservation" of the species, as that word is defined in the ESA.

"Conservation" is defined to include "regulated taking" only in the "extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved." The Service has not suggested that the argali faces any "population pressures" that require culling to preserve the species, and it should not facilitate the taking of these animals through the issuance of import permits.

There has been considerable litigation on the matter of trophy hunting or sport trapping of species listed as threatened within the United States. Federal courts have shut down a sport trapping season advocated by Minnesota and a trophy hunting season on grizzly bears in Montana because the "extraordinary case" circumstances did not apply.

There has been no litigation on the issue of the Service granting import permits for sport-hunted trophies

of threatened species. But it stands to reason that the clear language of the ESA should be applied to foreign species, too.

Leaving aside the issue of whether the ESA allows the taking of non-overpopulated threatened species, it is clear that the terms of the special rule established for the conservation of the argali have not been met since its adoption. The Service had no evidence to support the claim that revenues derived from trophy hunts of argali are enhancing the survival of the species in its native range.

In spite of this, the Service has taken a remarkably permissive approach to the granting of sport-hunted trophies of argali sheep; the Service has granted 300 permits for imports of argali sheep since 1992, when the Service first listed the species. It has been the Service's policy to grant import permits with the flimsiest of evidence.

The Service denied Mr. Jere Brunette's import permit request because there was absolutely no evidence that the killing of this animal in 1995 enhanced the prospects for the species' survival in Tajikistan. The breakup of the former U.S.S.R. in 1992 led to a civil war in Tajikistan that lasted until the end of 1996. Information received by the Service from the Tajikistan government after the war indicated that the argali management in 1995 was virtually non-existent. There was no control of poaching and there were no surveys conducted. According to internal Service documents, in 1995, the Tajikistan government had no wildlife laws, no Management or Scientific Authorities, and no law enforcement on wildlife taking. Clearly, under these circumstances, the Service was fully justified in its decision not to make an enhancement finding called for in the special rule.

Because the Service granted import permits for argali trophies for 1996 and 1997, it does not follow that they should grant permits for 1995, using the argument that the circumstances must have been similar. As mentioned above, there was no Acting Management Authority in the country in 1995. There is no evidence that funds derived from the hunt were applied to enhancing the survival of the species.

Beyond that, The HSUS strongly questions the Service's decision to grant import permits for sport-hunted trophies from Tajikistan since 1996 (as well as Mongolia and Republic of Kyrgyzia). There is no compelling evidence to indicate that money earned from trophy hunting concessions was applied to meaningful conservation of the argali in Tajikistan. This view is supported by the Caprinae Specialist Group of the International Union for the Conservation of Nature which stated, "In Tajikistan, most of the money generated is used to carry out the hunts, very little is used for conservation other than aerial censuses, in some cases for the provision of salt licks and supplemental feed, and also for wolf control." (David Shackleton, *Wild Sheep and Goats and their Relatives*, 1997).

Mr. Brunette killed a threatened species, and the animal is now dead. Congressman Barcia has asked what harm will now come from allowing the import of this carcass. The HSUS believes that it's necessary to understand the broader context for this decision. By granting this permit, it would invite other trophy hunters to take threatened and endangered species -- with no regard for their activity enhancing the survival of the species -- and then seek some means of circumventing the standards established to conserve the species. The overall effect of these actions is to promote the killing of threatened and endangered species and to contribute to human-caused mortality for a species clearly in peril.

Members of this committee may have heard information about a controversy involving the Smithsonian a few months ago. A prominent trophy hunter killed an endangered argali in Kazakhstan -- a Kara-Tau

argali, one of the rarest animals in the world. Only 100 of the animals survive according to an estimate by a Russian scientist in 1997.

Though the Service has strictly forbid allowing the import of sport-hunted trophies from endangered species of free-ranging populations, there is a provision in the ESA that allows the granting of import permits to scientific institutions for the benefit of the species. The trophy hunter made a donation of \$20 million to the Smithsonian for the creation of a Hall of Mammals, and soon after, the Smithsonian's National Museum of Natural History sought an import permit for that argali and three others for use at the Institution. The import permit request is still pending, but appears inactive. If the request is activated and then granted, it too sends a signal to trophy hunters that they can kill rare species, jeopardizing their survival, and then work with natural history museums or members of Congress to circumvent the protective measures afforded by the ESA and bring the trophy into the United States. We can't allow these abuses of the process; their cumulative effect would be to push species closer to extinction.

The Safari Club International and other trophy hunting organizations maintain awards programs that encourage the killing of rare animals, including the argali. As a consequence, there is an intense interest in shooting these animals and securing the awards and gaining a place in their record books. The Service must apply strict scrutiny to import requests in light of these pressures.

Granting this permit -- though it may seem harmless at first glance -- runs counter to the rules and sends a signal that killing a threatened or endangered animals with no evidence supporting enhancement is acceptable. The Congress should not send that signal.

Thank you for the opportunity to testify before this subcommittee. # # # # #

# **Committee on Resources**

## **Subcommittee on Fisheries Conservation, Wildlife and Oceans**

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### **Statement**

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Testimony on H.R. 1934

To Establish The John H. Prescott Marine Mammal Rescue Assistance Grant Program

Presented by Wayne Pacelle

Senior Vice President

Communications and Government Affairs

The Humane Society of The United States

Before the House Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

June 10, 1999

Good morning Mr. Chairman and members of the Committee. Thank you for allowing me to testify today on H.R. 1934. I am Wayne Pacelle, Senior Vice President of Communications and Government Affairs for The Humane Society of the United States (HSUS). The HSUS is the largest animal protection organization in the country with more than 7 million members and constituents.

The HSUS has a great interest in strandings and marine mammals. We sit on the Board of the Cape Cod Stranding Network. Sharon Young, one of our consultants, is the sole representative of the conservation community on the Unusual Mortality Events Working Group. This group is chaired by the National Marine Fisheries Service and consists primarily of veterinarians, pathologists and physiologists who can assess the need to formulate a national response to mass mortalities in marine mammals under the authority of Title 4.

The HSUS supports H.R. 1934, which would establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and we commend Chairman Saxton for introducing this important and valuable legislation. While we do support the legislation, we have some modest, but important, suggestions for improving the legislation and assuring that funds authorized under this legislation and appropriated by the Congress are spent consistent with its purposes.

### **Introduction**

Title 4 of the Marine Mammal Protection Act -- an important portion of the Act -- deals with response to marine mammal strandings. Congress showed great foresight in its consideration of the importance of collecting information from these events. We are saddened by the loss of life to marine mammals whenever a stranding occurs, but knowledge gained from this event can provide an indicator to us of perturbation in the ocean ecosystem that may also pose a risk to human health.

Stranding networks respond to a variety of situations ranging from large scale die-offs of bottlenose dolphins on the east coast and the recent heavy mortality in endangered manatees in Florida, to the day-to-day recovery of individual

animals whose solitary deaths are often pieces of a puzzle that can paint a picture of our oceans that may alarm us.

If stranding centers and volunteer stranding networks lack funds to purchase necessary equipment or contract for important pathology tests, we miss an opportunity to detect the presence of contaminants or pathogens in the ocean that are causing illness in or killing marine mammals and that may affect humans as well. I would like to offer an example that illustrates the importance of adequate funding to help in response to strandings, but also leads to some concerns that we have with the funding of this Section.

### **Lessons From Marine Mammal Stranding Response**

In 1998, an unusual mortality event was declared for California sea lions. Up to 200 animals died in this event. The Marine Mammal Center in Sausalito admitted 67 sea lions in a single 15-day period in late May. Memorial Day weekend coincided with a celebration of the Year of the Ocean, and while we celebrated our living seas, sea lions were being found on beaches, listless, weak, uncoordinated, coughing, suffering seizures and dying. Most of the animals were otherwise healthy adults. This distressing situation, coincident with a celebration of the ocean, caught the attention of the national press.

Due to the heroic work of Dr. Frances Gulland and the staff at the Marine Mammal Center, key diagnostic tests were performed to analyze blood, urine and serum, conduct EKG and ultrasound tests and undertake histopathology to examine lesions found in the brains of the dead animals. They found that animals were apparently affected by domoic acid, which is a toxin produced by a small planktonic organism, called *Pseudo-nitzschia australis*. The sea lions apparently had been exposed to domoic acid via the anchovies that they were eating. Anchovies are also a human food resource. Once the role of domoic acid in the deaths of these animals was recognized, health department officials were notified. They found that anchovies had levels of domoic acid that were up to 10 times

higher than the safe level for human consumption, and the market in anchovies was restricted.

A similar, smaller scale mortality event that occurred with sea lions in October was quickly recognized as domoic acid related, and timely notification of health officials allowed them to close the markets for local shellfish and mussels that were found to be contaminated. This time, early detection may have prevented risk to human life.

Shortly after the 1998 die-off in California, routine phone calls by the Marine Mammal Center revealed that for almost two months prior to the massive die-off in late May, smaller stranding organizations had been picking up individual sea lions who were suffering seizures and dying. These smaller stranding organizations lacked the funds to conduct diagnostic tests and tissue analysis that would have revealed the presence of domoic acid much earlier. This resulted in a large loss of life in sea lions. The Marine Mammal Center was unprepared for such a large number of animals, and used up its entire supply of seizure medication in the first six hours of their response. With advance notice of the presence of a potentially deadly toxin, more animals might have lived. Moreover, if the smaller centers had possessed the resources to detect domoic acid, health departments would have received earlier notification of the need to monitor fish and shellfish for this potentially deadly toxin. It was good fortune indeed that no loss of human life occurred.

Because California sea lions are so abundant, a catastrophic event in their population yields large numbers of ill animals that are readily recognized. Had this occurred in less abundant species, such as gray whales or offshore dolphins, fewer animals would have been found and potential contaminants and neurotoxins might have gone undetected until consumed by humans, with a resulting loss of life. Yet if individual animals that are dead or dying when they strand can be examined thoroughly, catastrophes may be prevented or at least predicted so that emergency response can be readied.

### **Potential Benefits of the Marine Mammal Rescue Assistance Act**

The Marine Mammal Rescue Assistance Act differs from the other sections in Title 4, in that it establishes a fund from which grants could be allocated directly to stranding networks and stranding centers. There is currently no mechanism to allow direct aid to these stranding network participants.

It is important to keep in mind, however, that although there is a great personal reward in saving the lives of stranded

animals and returning them to the sea, thorough examination of the bodies of animals that are dead when they strand is equally important. Examination of dead animals is necessary to our understanding of the health of the ecosystem and the threats to particular species.

Some of the critical needs that can be addressed by the funds from the Marine Mammal Rescue Assistance Act include allowing small stranding networks to buy specialized freezers that would enable them to store samples for later analysis. Funds might also be used to allow stranding networks to contract with veterinarians and pathology laboratories to assure proper collection and in-depth analysis of samples collected from animals. Funding that would allow stranding network participants to conduct thorough necropsy of dead stranded individuals might have allowed earlier detection of domoic acid in the example of the 1998 die-off, and prevented unnecessary risk to human health. Without funding to stranding networks, important indicators of problems in the marine system such as pollutants and toxic organisms that can affect human health may go undetected.

Funds might also be used to help develop the hardware and software necessary for individual network members to contribute to a centralized computer database that would document affected species, the dates, analyses that were done, diagnosis and location of samples that could be used by other interested institutions, as is clearly the purpose of the tissue bank and other sections of this Title.

### **Specific Recommendations**

While the HSUS supports this legislation and its intent, we suggest several modest, but important, changes to improve it. .

#### **1. We urge that the passage of this legislation not redirect funds now dedicated to valuable existing programs conducted by the National Marine Fisheries Service.**

We note that the current Section 408 of the Act (which would be renumbered 409) authorizes funds for data collection and analysis and for maintenance for a marine mammal tissue bank. However, actual appropriations have been substantially less than necessary to fulfill the mandates of this Section. This lack of funding was a major focus of the discussion at the most recent meeting of the Unusual Mortality Events working Group. Members expressed dismay that the National Marine Fisheries Service has not been able to develop a more accurate baseline of information on stranding rates, contaminants, diseases and related factors that help us understand factors that contribute to strandings. The Working Group sent a letter to Penelope Dalton of the National Marine Fisheries Service requesting that the Service seek an increase in funding to carry out the purposes of the various sections of Title 4 that already exist.

Greater funding is being proposed for this section of Title 4 than exists for all of the other sections of the Title combined, though the centralized analysis of data and archiving of tissues from geographically disparate strandings that is already mandated is critical. The Committee should use its influence with

appropriators to address funding problems associated with these important programs.

In that regard, we note that the funding proposed for this Section of Title 4 is \$5 million per year, whereas the entire budget for research and recovery of critically endangered northern right whales (*Eubalaena glacialis*) is less than \$1.5 million. We hope that funds from this account could be used to assure thorough necropsy of each right whale carcass, as cost to allow a thorough necropsy of even one of these large animals can exceed \$20,000.

Funds for the purpose of carrying out the mandates of the Act must be additional appropriations, not a directive to the Interior Department or the National Marine Fisheries Service to use already insufficient protected species funds to carry out this mandate. Research on population abundance, endangered species funds and funds to reduce human-related mortality should not be diverted in favor of allocating money to assist stranding networks.

Perhaps one way to secure additional funding for this new program would be to earmark a small percentage of Outer Continental Shelf revenues.

#### **2. Grants should not be made to support general institutional operating expenses, unrelated to the care of individuals**

animals rescued by the centers.

The HSUS is also concerned with the wording in proposed Section 408 (a) that allows grants to be provided for the collection of health information and the recovery and treatment of marine mammals, but also for the "operation of facilities." The current language in this section can be interpreted in such a way as to allow aquaria or stranding centers to use funds to pay for general operating expenses, including building maintenance and staff positions. This would seem to undermine the purpose of this section. Funds from this Section should benefit animals and our knowledge of factors contributing to strandings. They should not support the general operating expenses of institutions, except if they relate very directly to individual animals rescued by the institutions. We recommend narrowing this language to avoid inappropriate expenditures.

3. Grants should be available for the costs associated with conducting thorough necropsies and pathology tests.

The wording in proposed Section 408(a) states that grants are to be used for "recovery or treatment of marine mammals, [or] the collection of health information relating to marine mammals." This wording should not be interpreted as confining the use of these funds solely to the recovery or treatment of living animals. While this is an important use of the funds that may be available, funds are also needed to conduct thorough necropsy and pathology tests of dead animals. The HSUS suggests that this wording be clarified, perhaps by adding the wording "the conduct of necropsies, collection and analysis of samples" to the list of purposes for which grant funds could be used.

4. Grants should be allocated in such a way as to assure that they result in the maximum direct benefit to animals and our knowledge of strandings.

We would like to see wording in H.R. 1934 that would allow for some peer review of grants being allocated under this Section. Small stranding centers and networks, with low overhead, often have acute needs for funding, and may not be able to present their case as strongly as better-funded, larger institutions. To minimize the situation in which large, well-funded institutions may be favored over small effective volunteer networks, a peer review process should be established that can weigh the relative benefit to animals of a variety of grant proposals. Peer review can assure allocation of funds where they can make the biggest difference to the welfare of animals and the furthering our understanding of factors leading to strandings.

We recommend that Section new 408(c) be amended by replacing the existing language with the following language: "The Secretary, in consultation with regional stranding coordinators and an appointed advisory panel of stranding network participants representing each of the National Fisheries Service Regions, shall annually review grant proposals and allocate grants under this section."

## **Conclusions**

Strandings provide us a unique opportunity to understand factors that may affect the health of the ocean's inhabitants, and therefore threats to our own health. Grant funds could help assure timely and thorough response by stranding networks to living or dead stranded animals. The proposed addition to Title 4 could enhance our ability to rescue marine mammals or reap benefit from the tragic loss of their lives, but funds need to be weighed in the context of the various mandates under the Marine Mammal Protection Act and should be directed in such a way as to assure maximum benefit to animals and our understanding of threats to the ocean ecosystem

Mr. Chairman, we know that you have long been a champion of marine mammals stranding work. I believe you and Congressman Bill Hughes sponsored the first marine mammal stranding legislation in the former Merchant Marine and Fisheries Committee. With your leadership, we hope you can find a way to persuade the Congress to fund this critical research and rescue work.

Again, thank you for the opportunity to express our views. We are prepared to assist the committee in any way with regard to this proposed legislation.

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