



SPECIAL SUPPLEMENT

"Hunting provides the principal incentive and revenue for conservation. Hence it is a force for conservation."

World Conservation Force Bulletin

www.conservationforce.org December 2013

Unintended Consequences May Arise from Presidential Executive Order to Combat Wildlife Trafficking

On July 1, 2013, President Obama issued an Executive Order to combat wildlife trafficking (www.whitehouse.gov/the-press-office/2013/07/01/executive-order-combatting-wildlife-trafficking). Its stated objective is to control international wildlife poaching and trafficking. To implement the Order, the President created two bodies, a Presidential Task Force on Wildlife Trafficking and an Advisory Council that will work together to implement an effective National Strategy on Wildlife Trafficking (www.fws.gov/international/pdf/filed-charter-2013-advisory-council-wildlife-trafficking.pdf). While this was a welcomed action that should afford greater wildlife protection from unlawful taking and trade, we expect the action to cause a litany of headaches for governments that need and rely upon sustainable use of their wildlife resources and for the hunting community nationally and internationally. Already, too many recommendations are overreaching and require close scrutiny and participation.

On October 7, 2013, a strange mix of organizations sent Recommendations to the Presidential Task Force on Wildlife Trafficking. The objective of those recommendations is "to prevent poaching, disrupt trafficking and to curtail demand." The very first recommendation, 1.a, is alarming. It is not aimed at poaching. It is aimed at lawful



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hunting and legitimate hunters. It calls for a 10-year or longer moratorium on legal trade of both rhino horn and ivory!

1. Reduce Demand for Illicit Wildlife Products

a) Establish and implement a domestic moratorium on the import, export and sale of ivory and rhino horn products (including pre-Convention and antique specimens) in the United States. As a priority objective, a US moratorium would serve to: (1) reduce demand for rhino horn and ivory, (2)

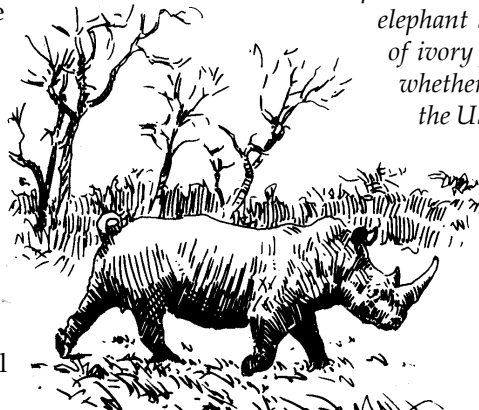
reduce illicit trafficking in rhino horn and ivory by removing parallel legal and illegal markets and the resulting opportunities for laundering of illegal wildlife products and (3) provide an example that encourages other countries to take similar legal and regulatory measures....Other important consideration under a moratorium are **how to best address hunting trophies and the problem of "lookalike,"** which allow traffickers to claim that illegal products (such as African and Asian elephant ivory that resembles mammoth ivory) are legal or regulated. We recommend that **trophy imports be limited** by criteria designed by the Administration to most effectively promote the conservation of elephant species, while sales of ivory from trophy tusks, whether current held in the US or imported in the future, be included in the ivory sale moratorium. We further recommend that regulatory measures are established to address the

"lookalike" problem. (Emphasis added)

Other subparts of that very first recommendation call for the USFWS to "(b) Publicly destroy government seized elephant ivory," and that "(c) the US Department of Education to integrate wildlife trade issues in school programs, by means comparable to drug education programs" and "undertake an intelligence assessment in the US and abroad of (1) the challenges posed by parallel markets for legal and illicit wildlife products...."

The mix of organizations submitting the recommendations is alarming in itself. While submitted "jointly," the recommendations "do not in all cases reflect consensus opinions." The list of "contributing" organizations includes Born Free USA, Defenders of Wildlife, Environmental Investigative Agency, Humane Society International, Humane Society of the United States, International Fund for Animal Welfare (IFAW), et al. as well as the less onerous World Wildlife Fund (WWF, who is said to have hosted the meeting for the letter of recommendations), Wildlife Conservation Society, The Nature Conservancy, TRAFFIC, African Wildlife Foundation, Association of Zoos and Aquariums, et al. No hunting organization is listed as being invited or "contributing." We wonder if this "joint" letter was fully authorized by TRAFFIC, WWF, et al.

We find the mixture of organizations strange in light of the tone of the first listed recommendation. Nevertheless, the emergency listing of the southern white rhino as "threatened" on July 11th as a "lookalike" is concerning. We have sent a Freedom of Information Act request to USFWS to obtain the correspondence between Law Enforcement and the listing office that was said in the published listing notice to be the cause of the action but with



little explanation. We have no evidence at this time that there has indeed been a problem for Law Enforcement. Second, we filed comments opposing the listing without more detailed reasons for the lookalike classification and suggested adopting a Special Rule to dispense with or at least issuing a statement that enhancement findings will not be necessary for import of southern white rhino from Namibia and Zimbabwe (on Appendix I). Enhancement findings are notorious for adding expenses and delay or being a complete barrier to

import permitting. The Federal Register Notice of the emergency listing does not address the enhancement finding issues for those rhino on Appendix I of CITES (Namibia and Zimbabwe) at all. USFWS has since informally told us that they will not require enhancement findings because the white rhino's listing is based solely upon being a lookalike. The southern white rhino has a robust population that is still at record numbers at this time. Lookalike listings still cause us concern. What will be listed next? ■

The Crush: Whose Ivory was Destroyed and Will It Truly Curtail Poaching?

In furtherance of the President's Executive Order, on November 14, USFWS "destroyed its six ton stock of confiscated elephant ivory" at its National Wildlife Property Repository on Rocky Mountain Arsenal National Wildlife Refuge near Denver Colorado. World Wildlife Fund, the International Fund for Animal Welfare and members of the Advisory Council were present and their statements were cited in the USFWS press release. The ivory "was pulverized by an industrial rock crusher with attendance of some of the world's most influential conservationists," according to the press release. It was crushed because it does not really burn. Well, it does not really crush either.

The media has been representing that the ivory was primarily poached or illegally taken ivory, but the formal USFWS press release confirms what we expected. A great deal of the ivory was lawfully taken hunting trophies largely confiscated over the past 25 years for non-substantive errors of export and import brokers and exporting government clerical errors. By far, the tusks were lawfully taken as part of a conservation strategy and management plan of the respective exporting countries and the revenue funded the operating budgets and costs of anti-poaching efforts. The owners of the lawfully acquired tusks were personally innocent of any wrongdoing and relied upon the permitting of the exporting government authorities and expertise of the professional import/export brokers. Conservation Force has sent a Freedom of Information Act request to

the Director of USFWS for an inventory of the crushed ivory (really just broken up and now they don't know what to do with that) to determine what percentage was legally taken trophies seized for clerical, non-substantive errors during the importation process.

While the message was intended to be noble, the fact is most of what USFWS attempted to pulverize was among the most valuable personal possessions of licensed, regulated hunters who were entirely innocent of real wrongdoing. Any suggestion that it was poached ivory is not truthful. Instead, its original owners were an important anti-poaching force, if not the most important. The press releases have added insult to the seizure and forfeitures as has the presence of IFAW with a parade of stars at the attempted destruction of the trophies.

Resolutions of CITES expressly provide for an importing country to notify and also to return such items to the exporting country of origin. Obviously, USFWS has made policy decisions overriding the two CITES Resolutions as it has chosen to convert innocent owners' trophies into contraband. The USFWS has regulations for disposal of forfeited wildlife parts. Contraband can be sold, but some items are excepted. CITES Appendix I species and ESA listed species cannot be sold. 50CFR12:37. Of course, African elephant are ESA "threatened." But for those exceptions, disposal by sale is preferred before destruction. 50CFR12:32. Destruction is the last in order after (1) return to wild, (2) put to government use, (3) donation



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or loan, (4) sale and (5) destruction, in that order.

The USFWS press release is entitled *US Destroys Confiscated Ivory Stockpile, Sends Message that Wildlife Trafficking, Elephant Poaching Must be Crushed*. That message has different meanings to different interests. Let's hope it does curtail poaching and real wildlife trafficking. It shows no sensitivity to the lawful hunters now any more than at the time of seizure of their trophies. Having IFAW parading around hunters' trophies that were confiscated for harmless human errors was worse. USFWS is working with people to our exclusion who have an agenda and openly admit they would rather game animals cease to exist than be legally hunted. The message that the "US will not tolerate wildlife crime," the crush and the ceremony should have been done with select tusks, not lawfully taken hunting trophies. At the worst, the trophies after separation should have been auctioned to jewelers and furniture makers within the US (export prohibited by African Elephant Conservation Act-AECA) and the proceeds added to the African Elephant Conservation Trust Fund. The declared "message that wildlife trafficking and elephant poaching must be crushed" is unrelated to harmless import permitting errors.

The press release states:

Although some African elephant ivory (including lawfully hunted trophies and antiques that meet specific requirements) can still be imported legally into this country with appropriate permits, the United States generally prohibits commercial trade of both raw ivory and ivory products. The Service is currently evaluating ways to further strengthen its elephant ivory trade controls. (Emphasis added.)

This last sentence is foreboding in light of the already existing seizure and forfeiture practices (the most severe in the world) as well as the years of headaches to establish and maintain elephant trophy imports. If they raise the bar to imports even further, they will kill more elephants and eliminate more habitat than they can hope to save.

Conservation Force expends one-half million to \$1 million a year in anti-poaching, primarily in Africa. A core part of sustainable use is to incentivize local people not to poach and to stand against those who do poach. Another essential is to generate revenue for anti-poaching activities. Also, the mere presence of a hunting operator deters poaching. That said, the hunting community is not invited to the table. Instead, it can be a ready target for those misusing the Executive Order. This is

much like the UN *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms* that, while aimed at illegal small arms, has sections seriously burdening lawful firearms ownership, use and transportation. ■

Climate Change Used to Reopen Wolverine Listing Proposal

On October 31, the USFWS reopened the proposal to list the US population of wolverines as threatened (78 FR 65248). The comment period was reopened until December 2, 2013. The USFWS published an intent to issue a Final Rule by February 4, 2014. Apparently, an issue has arisen about the dependency of wolverines upon cold and snowy conditions and habitat that closely approximates the area covered by snow until late spring. Climate change impacts on wolverines within the US and its snow dependence in climate change "models used to predict future impacts of climate change on its habitat" is the concern. Climate change has become a part of the "habitat" listing factor, thus future climate modeling has become a routine part of all ESA listing determinations since the polar bear listing. ■

Conservation Force Wins FOIA Suit for Records Revealing Why USFWS Stalled Markhor Downlisting

What really happened to the 1999 petition to downlist the Sulaiman markhor? The USFWS has been withholding the information, so we went after it.

On October 10, the Federal District Court in the District of Columbia granted Conservation Force's motion for summary judgment in an important FOIA suit. In the Markhor I suit, Conservation Force, et al. sued to compel the USFWS to make a 12-month finding on the IUCN's petition to downlist the Sulaiman markhor in Pakistan. The USFWS never produced the Administrative Record in that litigation. Instead, it filed a motion that the time limits to enforce that petition had passed six years after the

mandatory deadline for the USFWS to make the 12-month finding. We appealed that lower court decision, but by the time the appellate court reached the case, we had successfully filed another, second downlisting petition and the USFWS had made a positive 12-month finding and proposal to downlist those markhor. Because of that the appellate court ruled that the appeal was moot and no Administrative Record was produced in that litigation.

We thought it suspect that the Record was never produced, so we filed a FOIA request for the Administrative Record independently of the litigation. The USFWS at first ignored the request, then after multiple written

warnings of a suit, USFWS promised the Record but still did not produce it. After more letters threatening suit, we sued the USFWS to produce the Administrative Record of the first downlisting petition. In response, the USFWS finally produced a part of the Record. The response was only the Record up to the 90-day determination and not what followed. There was no explanation whatsoever why the USFWS never made a 12-month finding, no copy of the comments that followed the 90-day published notice calling for comments or anything as to the next 12 months.

The USFWS claimed it did not have to produce anything past the positive 90-day finding and that most

of the information was attorney client privilege. We in turn argued that unlawful conduct and fraud is never privileged. The Court ruled in favor of Conservation Force and reasoned that the USFWS's own rules provided the definition of an Administrative Record and that expressly included the documents of the 12-month period following the 90-day notice. The Court ordered that the USFWS conduct a search for those records requested for the 1999 downlisting petition and produce them before January 3, 2014. We hope to uncover why the USFWS

did not act on the first petition (1999) to downlist for approximately a decade. That in turn should provide insight to other, similar delays during the same decade of promises without action. How can USFWS be kept responsible and accountable if they can just say "trust me, we are on it" for a decade then make no explanation when they fail to act?

In other markhor action, the government shutdown has delayed the publication of the broadened downlisting proposal for the Sulaiman markhor growing out of the Markhor

III litigation over the second downlisting petition.

Meanwhile, the dismissal of the Markhor II suit over the permit denials has been stayed in the Appellate Court until January while we try mediation to resolve the permit denials. The USFWS has proposed the downlisting itself for reasons that contradict the permit denials. We hope USFWS will take into greater consideration the benefits that the markhor are losing during the delay of the downlisting that will also ultimately make import permitting unnecessary. ■

Suit Threatens Three Amigos Permitting Process; Conservation Force and Allied Organizations to Intervene

Friends of Animals has filed a new suit over the permitting of the scimitar-horned oryx, addax and dama gazelle. In this suit, filed October 16, 2013 in the District of Columbia, they wish to vacate permits of some ranches, enjoin the issuance or renewal of any new permits and vacate the use of the instructions or guidelines created to assist ranchers in completing the permit applications.

The first suit was filed by Friends of Animals in 2006. In 2009, the District Court dismissed most of the claims filed by FoA. All but one claim was dismissed. That was the one that they were entitled to a public notice and opportunity to comment on a ranch-by-ranch basis. The USFWS finally applied a ranch-by-ranch permit application process that had been used for over a decade for other listed exotics like barasingha, Eld's deer, Arabian oryx and lechwe. In response to complaints about the complex, multi-purpose permit applications that had no instructions of any kind, the USFWS adopted some guidelines for the applications relative to ranchers as distinguished from other breeders like zoos, circuses, research facilities, etc. Now FoA is challenging the

permitting practices and the guidelines or instruction sheet that help applicants to wade through those sections that are not applicable to ranchers. The USFWS chose to do that rather than creating a different application form for each user group as we suggested. FoA claims that the preparation of the guidelines should have been a public process with its (FoA) participation, that applicants are not furnishing necessary information on their application forms, and that the 30-day notice period for them to make comments (they oppose all applications) is not sufficient. They are also challenging the enhancement determination being made by the USFWS.

Conservation Force assists most of the ranchers with their applications and renewals as a public conservation service for the good of the species. Our program is called Ranching for Restoration. We also receive and hold in trust 10 percent of the revenue from the harvests for USFWS-pre-approved projects that benefit or restore the respective species in countries of origin. The antis would rather the animals cease to exist rather than a surplus be hunted as an elementary husbandry/

management practice. Hence, the antis periodically threaten our project leaders with controversy for accepting and placing funds in selected projects.

In short, FoA wants longer notice so it can oppose the issuance of permits and obtain information to challenge the issuance and undermine the projects intended to enhance the species. We don't think they have standing because what they want does not further the purpose of the ESA or enhance the three species. If anything, we want to make sure the permitting process is improved, but not eliminated. That we can do by intervening.

There are some more than incidental similarities between the antis recommendations to the Advisory Panel concerning poaching and trafficking (above article) and the comments, notices of intent to sue and suit by FoA. Both claim hunting adds to the "demand," thus black market price, that lawful hunting has negative "parallel" effects and that lawful trade should be prohibited because the animals are "lookalikes" of those intended to be protected. These are the newest barrage against lawful hunting of any kind. ■

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