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"SERVING THE HUNTER WHO TRAVELS"

"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

□ **News...News...News...**

Mozambique Elephant Trophy Import Permit Applications Denied

After six long years, the USF&WS has finally acted on all of the outstanding elephant import applications from US hunters who have taken elephant in Mozambique. The Service has denied them all after an incredible delay. The reasons for the denials are even more disappointing. They are the worse we have seen in 15 years.

Nine applications that were filed between 2000 and 2005 were denied. There may be others that were not directly represented by Conservation Force. It is imperative that any applicants that we do not know of and already represent contact me immediately so that we can include them in the request for reconsiderations and appeals as necessary. All services are provided free and as a public service of Conservation Force.

It is necessary for the Division of Management Authority and the Division of Scientific Authority to each separately approve elephant trophy import applications. The Division of Management Authority decides if the hunting "enhances" the elephant population under a special rule of the Endangered Species Act because it is listed as "threatened". The Division of Scientific Authority determines if the "purpose of the import" is not detrimental to the species because of its CITES Appendix II listing. Both divisions decided unfavorably. In our opinion, neither determination was legal, or in the best interest of the species.

The denials confirm our suspicion that the Service is not trying and would prefer that new areas not be opened. Administrations come and go, but the service just gets worse. Here are the facts, you be the judge.

First, there have been five reasons for the six years of delay, and they all rest on the shoulders of the Service. For the first two years, the service did not begin the processing of the permits because they said it was a "low priority".

Much later, we were told that the hold-up was that the Service was waiting on a reply to a letter of inquiry they had sent to the Mozambique authorities. The Mozambique authorities repeatedly searched but could not find any such letter. When we made repeated attempts to get a copy of the alleged letter, it was discovered that no such letter existed. After 1½ years, the process had not been initiated.

Only after we filed a letter of grievance with the Director of USF&WS was a letter of inquiry sent to Mozambique. The Mozambique authorities quickly responded, so we waited again for the USF&WS. The Service sent a second letter inquiring further about a few of the 51 points they raised in their first

letter. We were not told of the second letter or sent a courtesy copy.

After more delay, we learned of the second letter, but Mozambique said it had answered all inquiries. We could not help the authorities find it until we had a copy. When we finally got a copy of the letter to give to Mozambique, they said that it was already answered. Their reply had been given to the US Ambassador in Mozambique as is the practice with foreign correspondence, but the USF&WS claimed not to have received it.

The authorities in Mozambique knew they had already answered the letter, provided another copy of their response to the Service and the permit process finally began. All of the information had been supplied in the original permit application and was referred to in each of the subsequent applications. The Service said it most certainly would not grant any permits if the foreign country authorities would not correspond with them directly. The Service has never communicated to any of the applicants that it needed or desired more information of any kind whatsoever. Nevertheless, under the law, it is the applicants, not the export country that must furnish the information.

In another new protocol, the denials state that the applicants can't submit any additional information in the reconsideration process. That statement directly contradicts regulations required to be attached to the denials which explain the applicant's right to reconsideration and that it should include "any new information or facts pertinent to the issues". This is very important because neither the Service nor the applicant can know what additional information is needed when the permit is filed. The Service decides that while making the review when the permitting is for a new hunting destination such as Mozambique. These illegal "catch-22's" are certainly not making it easy for applicants. These denials are part of a bigger problem that is growing worse. No permits of any new destination of any kind have been issued in more than 6 years and the improved permitting policy promised and adopted during my leadership of SCI a decade ago are little known or shelved documents gathering dust.

The reasons for the denial are even more disappointing than the laissez-faire process has been. The Division of Scientific Authority examined the biological status and management information to determine whether the "purpose" of the imports would be detrimental when the "purpose" is not a biological consideration. This is contrary to the intent and spirit of CITES and specifically Resolution 2.11 (Rev.) adopted at COP 9. Under CITES, the biological and management review is intended to be made by the exporting, not the importing country. Worse than that, the Service second guessed the exporting country incorrectly.

The Service's denials state that "there is apparently no scientific basis upon which these quotas have been established each year and the actual elephant population in Mozambique is currently not known." To the contrary, there is no scientific basis to deny the permits. First, the elephant hunting areas have been surveyed - even in part with USF&WS funding. There was only a nominal quota of ten elephants for 1999 through 2004. Seven of the nine permits denied were taken when there was only an annual quota of ten and only a fraction of those ten were actually allocated. The quotas served as a maximum number to be allocated. If all had been taken in one hunting concession, it would have been less than one percent of the surveyed population estimates in any one of the hunting areas. Moreover, the wildlife authorities did not allocate the possible ten. They allocated no more than one or two per block per year. For example, in the first year only two were allocated for the entire country. There is no scientific support for the view that the taking of two bull elephants in a year is biologically significant! The failure to make a non-detrimental finding is incredulous.

The Service also did not find that the hunting "enhanced the survival of the elephant in Mozambique," Yet it stated that a program "that would provide local communities with a stake in

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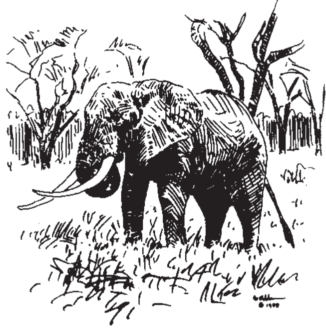
the management and conservation of elephant" could be enhancement. That is exactly what exists in Mozambique. The elephant were taken in project areas established at the cost of millions of dollars in which the entire trophy fee goes to the local villages. The Service neglected to even acknowledge the existence of letters from the village chiefs and the articles and reports of the project authors. The hunting areas are modeled after CAMPFIRE and were established by the Chairman of the Regional Sustainable Use Specialist Group of IUCN, Brian Child. It is a model communal based natural resource management plan.

The reasons for the denials are rambling and confusing, but the salient points are most conspicuous for the information ignored. In one instance, the service states that "there is no information to show what measures, if any, were being taken to deal with human-elephant conflict, to reduce poaching and illegal take, or to maintain wildlife populations." That is exactly what Mozambique's written *National Elephant Management Strategy* explains it expects and intends from tourist elephant hunting. The delay and denials of these permits are in direct conflict with the strategy drafted and being implemented in key areas of Mozambique.

We've not filed any import applications from Niassa Resrve area,



though we are in the process of doing that now. No permit from Niassa has been filed, so none have been denied. In 2005, the Mozambique quota was increased from 10 to 40, primarily to incorporate the Niassa Reserve. We are filing import permits for the Niassa Reserve Area which is a model project in Northern Mozambique that relies heavily upon elephant hunting. There, the elephant population is documented in bi-annual surveys to be increasing and the area has an intensive management plan addressing all of the issues through safari hunting.

So what do we do now? Conservation Force will ask for reconsideration of these permits and take this matter all the way. We will consult the top elephant experts in the world to re-educate the Service. The processing and denials of the permits leave no question that there are underlying problems within the USF&WS divisions that conduct permitting. Absolutely no one other than Conservation Force is doing this work to expand hunting destinations and to employ hunting to save the game, people and places we all care so very much about. When things get tough, we have to get tougher. Please help support Conservation Force by making a tax deductible contribution to Conservation Force at 3240 S. I-10 Service Road, W., Suite 200, Metairie, LA, 70001-6911.

New Law Limits Income Tax Deductions for Trophy Donations

Congress has enacted a "Special Rule" to limit the amount of income tax deduction a donor can claim for donation of hunting or fishing trophies. The new law limits the valuation "basis" to the costs of the taxidermy regardless of the real value.

The "Special Rule" governing the tax deductibility of charitable contributions of trophies is part of a charitable tax reform package that was tacked onto the *Pension Protection Act of 2006*, HR4. It passed the House of Representatives and was then adopted by the Senate verbatim. It has an effective date provision that specifies it "shall apply to contributions made after July 25, 2006."

There is no denying that the "special rule" is considered reform legislation to correct perceived abusive tax practices. It is part of a larger reform package, follows some well publicized hearings and IRS has been targeting trophy donation deductions for more than a decade. In many audits, IRS has been zeroing deductions for trophy donations and assessing as much as 200 percent penalties. IRS has not even allowed the costs of taxidermy in many of its audits, so in that narrow sense, this new special limitation is a gain. The exaggerated advertising claims of at least one well known appraiser have been repeatedly cited and used against the hunting community. Those misrepresentations have been so bold as to paralyze the hunting community from defending donation practices. Outrageous advertising claims of some appraisers invited Congressional review, made trophy donations a reform target, and made it hard to defend. This may have been one of those instances in which some in the hunting community are its own worse enemy.

There was a growing perception of abuse. One advertisement suggested that you could hunt again with the income tax savings from your trophy donation. That implied that you could hunt forever for free by donating your trophies each time. To the contrary, the courts have generally not accepted the costs of even one hunt as the valuation basis of mounts even if you went on five hunts to take the animal and it was the world record. Moreover, tax savings are not dollar for dollar. Because taxes are only a percentage of your income, you must donate or give more value than you gain to get the relatively smaller income tax savings. The new limit is rather severe considering the true value of some trophies such as a record whitetail deer, mounts of rare and even extinct species, and the high cost of replacement in some instances. The cost to shoulder-mount a markhor and an impala may be the same but their real values are not the

same. Now, the tax deductions for a donation of the two will be the same for each (presuming the two shoulder mounts cost the same)

The new rule is not a challenge to taxidermy as such because it fully recognizes the cost of the taxidermy. No matter how elaborate the taxidermy, that cost is now recognized but the greater value of the finished work is no longer valued, as are other forms of art (Pub. 561). This reflects the longstanding argument that IRS auditors have made to courts with varying, limited success that the costs of replacement, cost of acquisition, cost of the underlying hunt for the trophy is not the value of the trophy, rather it is the value of the total hunting service. IRS experts have repeatedly argued that the individual hunter has gotten his money's worth from the hunting experiences and the trophy is incidental. The cost of a hunt is the cost of the hunt, not the value of the trophy.

The valuation of trophies has been difficult as well as controversial. Normally, the "market value" at the time that a donation is made is the amount of the allowable income tax deduction. When an item such as a work of art is unique and there is no established market value, the courts have taken into consideration everything that has bearing upon its true value. IRS has used law enforcement agents as experts to cite low black market values of illegal contraband as well as junk dealers, flea market prices, and forced bankruptcy and succession sale prices. Donors and their appraisers have argued that those are forced, not "fair" market values or even the market in issue. Before you can appraise something you must first determine which market. Museums, educational and scientific markets are higher-end markets and legally the only markets relevant. These differences of view have raged for years in courts.

The "special rule" at first appears to put an end to the valuations dispute but, on closer examination, not in all cases. Though the "special rule" fixes the amount of the deduction for trophy donations to the costs of the taxidermy, this limitation only applies to two classes of donors. The rule only applies to donations of mounts from the person who mounted the taxidermy (we presume that means the taxidermist) and to the individual person who paid for the mounting (presumably the hunter who is believed to have already gotten value from the hunt himself). As such, it may not apply as a limit to heirs of estates and other third persons, such as those who buy an already mounted trophy at full value and then later decide to donate it to a qualified charitable institution.

One inequity to limiting the "basis" to the taxidermy costs is the fact that the rule only applies to valuation for income tax purposes, not valuation for inheritance tax purposes, which are governed differently. Although, you can no longer deduct your trophy donations for their "fair market" or "unique" value, your estate will be taxed at their real value.

There is another tax rule that must be considered that may make the cost of taxidermy limit even more unfair. Taxidermied mounts, like other property, can decrease in value through wear and tear, use and aging. The cost of taxidermy is only the tax "basis," not the deduction. The basis of property that has decreased in value has to be adjusted. If the market value is less than the original taxidermy cost because of its condition, you can only deduct the lower amount. (IRS Publication 551, *Basis of Assets*). This is an existing separate rule that does not appear directly in the new special rule for taxidermied mounts. The staff report explaining the *Pension Protection Act of 2006* does state that donors' deductions will now be limited "to the costs of the taxidermy or the fair market value, whichever is less".

Here is the new legislation:

SEC. 1214. CHARITABLE CONTRIBUTIONS OF TAXIDERMY PROPERTY.

(a) Denial of Long-Term Capital Gain. Subparagraph (B) of section 170(e)(1) is amended by striking 'or' at the end of clause (ii), by inserting 'or' at the end of clause (iii), and by inserting after clause (iii) the following new clause: "(iv) of any taxidermy property which is contributed by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting,'.

(b) Treatment of Basis. Subsection (f) of section 170, as amended by this Act , is amended by adding at the end the following new paragraph: '(15) SPECIAL RULE FOR TAXIDERMY PROPERTY.'(A) BASIS. For purposes of this section and notwithstanding section 1012, in the case of a charitable contribution of taxidermy property which is made by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting, only the cost of the preparing, stuffing, or mounting shall be included in the basis of such property.

'(B) TAXIDERMY PROPERTY. For purposes of this section, the term 'taxidermy property' means any work of art which— '(i) is the reproduction or preservation of an animal, in whole or in part, '(ii) is prepared, stuffed, or mounted for purposes of recreating one or more characteristics of such animal, and '(iii) contains a part of the body of the dead animal.' (c) Effective Date - The amendment made by this section shall apply to contributions made after July 25, 2006. – *John J. Jackson, III.*

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