



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 August 2016

Conservation Force Sues the State of New Jersey to Void Anti-Trophy Law

In the last *Bulletin*, we warned you about New Jersey's new law banning the possession, import, export, transport, etc. of African elephant, leopard, lion and black and white rhino ("Big Four") trophies. Conservation Force promised to take action against the law – and we did.

On July 8, Conservation Force, as lead Plaintiff, sued the New Jersey Attorney General and Commissioner of the Department of Environmental Protection to stop enforcement of this law and have it declared void. Plaintiffs asked the court for a preliminary injunction and filed a special motion to expedite consideration of the request.

Plaintiffs include Conservation Force, five individual hunters residing in New Jersey (one of whom is also the owner of a store that sells hunting equipment and firearms), a taxidermist residing and working in New Jersey, and the Garden State Taxidermist Association. Defendants are the state officials charged with implementing and enforcing the trophy ban.

The complaint alleges two counts. The first is preemption of the New Jersey law under the Endangered Species Act. The ESA contains an express provision which "voids" a state law that "prohibit[s] what is authorized pursuant to an exemption or permit provided for in [the ESA] or in any regulation which implements [the ESA]." Import and subsequent possession of the Big Four are all authorized and regulated by the ESA, CITES and US Fish & Wildlife Service (FWS) regulations and permits. Even more importantly, the USFWS uses "enhancement permits"

DATELINE:
United States



John J. Jackson, III

42 U.S.C. § 1983. Section 1983 allows a suit against a state official to enjoin enforcement of a state action that infringes a federally-protected right or privilege. Imports of the Big Four are authorized by USFWS permits. Plaintiffs argued that the issuance of these permits (under the ESA, CITES and federal regulations) creates a federal right or privilege. Essentially, the permit means a Big Four trophy can be lawfully imported. Plaintiffs argued that the ban on Big Four trophies in New Jersey is a state action which deprives hunters holding valid USFWS permits of the exercise of their federally-protected right.

To obtain immediate relief, Plaintiffs sought a preliminary injunction. If Plaintiffs succeed, New Jersey will not be able to enforce the Big Four trophy ban until the Court resolves the case. A preliminary injunction requires a showing of "irreparable injury," which means injury that is

not compensable by money damages. Plaintiffs made a strong showing and submitted eight declarations evidencing their losses.

as a conservation tool, and has repeatedly issued them when a range state's management and hunting programs benefit the listed species (including for black rhino and elephant). Accordingly, Plaintiffs allege and argue in their motion for a preliminary injunction that the New Jersey law "prohibits what is authorized" by the USFWS and US law, and is void under the ESA.

The second claim is for deprivation of a federal right or privilege under

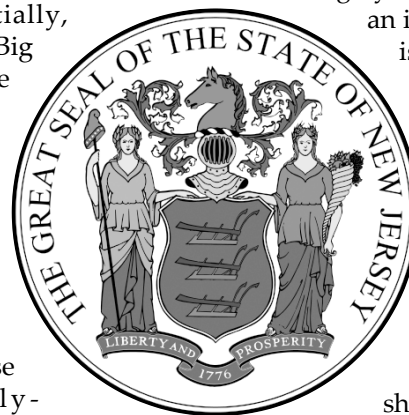
not compensable by money damages. Plaintiffs made a strong showing and submitted eight declarations evidencing their losses.

New Jersey hunters are "irreparably injured" because the New Jersey law prohibits their possession of irreplaceable personal trophies and diminishes their desire to hunt. Each trophy is unique and highly-valued by the hunter. It is a symbol of his or her success and a tangible memory of the hunt. Not being able to bring back the trophy reduces the value of the hunt and discourages participation. New Jersey's law diminishes the hunter's enjoyment of Big Four hunts and forces a hunter to reconsider whether they are worth the high cost, and robs the hunter of a special piece of personal property.

New Jersey taxidermists catering to Big Four hunters are irreparably injured by enforcement of the ban because taxidermy is a unique industry. Taxidermists preserve and mount real animal parts – and not just any parts, but the highly-valued personal trophy of

an individual hunter. There is no substitute for this material. The New Jersey ban shuts down a portion of New Jersey taxidermists' businesses. It damages their professional reputations, causes them to lose customers, and reduces their goodwill and market share. Those losses cannot be recovered while the Big Four ban is in place.

Finally, Plaintiffs pointed out that New Jersey's law will discourage hunters from participating in Big Four hunts. Fewer hunters will reduce hunting revenue in range nations. But that revenue provides the backbone funding for habitat protection, range nation



wildlife authorities, anti-poaching, and community conservation programs, and the loss of these conservation incentives damages Plaintiffs. It frustrates Conservation Force’s organizational mission of promoting sustainable use-based conservation by reducing the benefits of sustainable use. It impairs the millions of dollars in anti-poaching, management, and community assistance programs that Conservation Force has funded for the Big Four and other species. It damages range nations by reducing their operating budget revenue, and will likely damage the Big Four by opening the door to loss of habitat and increased poaching and human-wildlife conflict. To reinforce this point, Conservation Force submitted the declaration of Chrissie Jackson, which documents our 19 years’ of programs that will be compromised by enforcement of a Big Four trophy ban that reduces hunting revenue in Africa.

In short, the USFWS has found that licensed, regulated hunting “enhances

the survival” of the Big Four. But the unintended consequence of the new law is to deny the Big Four this “enhancement.”

The suit is filed in the federal district court in New Jersey. The case name is *Conservation Force v. Porrino*, No. 16-CV-4124, pending before Judge Freda Wolfson. Plaintiffs are represented by the well-regarded New Jersey law firm Connell Foley LLP and Conservation Force.

Conservation Force has also served 60-day notice of intent to sue under the ESA on the Secretary of Interior and New Jersey Governor Chris Christie. The “citizen suit” provision of the ESA allows private individuals to sue “any person” who violates the Act or its implementing regulations. But it requires 60-day notice to be given to the Secretary and that person before a suit may be filed. If the current case does not succeed, Conservation Force’s “backup plan” is to sue Defendants under the ESA. ■

Conservation Force Appeals Dismissal of Delta Lawsuit

On July 8, Conservation Force filed a notice of appeal to challenge the dismissal of its lawsuit against Delta Air Lines in the federal court in Dallas. In June, the court dismissed Conservation Force’s complaint that Delta’s embargo violates Delta’s duty of non-discrimination as a common carrier and under federal aviation regulations. Conservation Force and its co-plaintiffs argued that Delta is a common carrier that “holds itself out” to carry pretty much anything, including hunting trophies, and that therefore



cannot discriminate against Big Five hunters and their trophies. The court narrowed the common carrier’s duty, and held a common carrier can limit what it carries to “items of its choosing,” including distinguishing between Big Five trophies and other trophies.

Conservation Force will challenge this ruling in the U.S. Court of Appeals for the Fifth Circuit. (For more details read our press release recently distributed by *The Hunting Report* and posted on its homepage at www.huntingreport.com as an Email Extra bulletin.) ■

Conservation Force’s Biggest Supporters

In the June Bulletin we had a short piece about Conservation Force’s biggest organizational funders. A staffer could not read my handwriting and had to re-write it in my absence. Big mistake! Here it is again:

Conservation Force has four super supporters, our Big Four, who are in a league by themselves. They are: Dallas Safari Club, Wild Sheep Foundation, Grand Slam/Ovis and Shikar Safari Club International Foundation (Shikar’s

foundation, not to be confused with SCI or any of its chapters). If you belong to any or all of these four organizations, then be assured that they are very important to Conservation Force and all that we are able to do.

We are proud to be so significantly supported by these high-caliber organizations. Please thank them for supporting Conservation Force when you can.

This said, at times there are



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individual supporters that give more than any of our Big Four in a year's time. Believe me, these are individual people who care and want to make a difference and fight for what is right and our sporting way of life. They get their

money's worth.

There are also many organizations, foundations and corporations (in the hundreds) many of which contribute a far larger proportion of their annual income than any one of our Big Four.

They are very dear to us and know who they are. So you know, together the support is not enough with today's crisis. Nevertheless, it remains the most direct, efficient and effective investment you can make. Thank you all. ■

New Ivory Elephant Import Rule and Form

On 6 July the new regulation governing import of elephant ivory and sale after import went into effect. The new elephant trophy import permit application form was posted on the FWS page for forms on the same date. The form is Form 3-200-19 and "Expires 11/30/2016." The title of the form is unchanged and it does not specify it is now for elephant from RSA, Zimbabwe and Namibia even though those are the CITES Appendix II elephant that now require Enhancement import permits under the ESA. There are two changes in the application. The language had said, "(Import permit is not required for trophies harvested in Botswana, Namibia, South Africa, or Zimbabwe)." That has been deleted. It has a larger section covering utilitarian items made of the trophy. Those parts have to be itemized in the export permit and in the import permit application.

The second change is the following added language: "(Import is limited

to two per hunter per calendar year) NOTE: once imported, ivory cannot be re-exported."

The new application form is available at: www.fws.gov/forms/3-200-19.pdf

Also on July 6 the FWS issued a video explaining the new ivory rule that explains that sport-hunted ivory can never be sold interstate once imported. It is an uncommonly understandable video in a regulatory area that has always been confusing. The FWS is to be complemented.

See https://youtu.be/OeJ_3rkOmbs.

FWS has also Noticed in the Federal Register a request for comments on the new information collection for import of Elephant, 81 FR 37207(June 9, 2016). It is a call for comments to the Office of Management and Budget (OMB) to approve the new permitting requirement for Appendix II elephant. "The burden associated with these



additional applications is the basis of this information collection." The FWS states it "expect(s) to receive 300 additional

applications for permits" that have previously not been required for CITES Appendix II listed elephant, which are only listed as Threatened under the ESA.

The new permit requirement is an "emergency rule" adopted before being approved by the OMB. A \$100 application fee is required, but our real concern is the reality that there will inevitably be harmless clerical errors, thus seizures and forfeitures for harmless errors beyond all proportion to the "harm" caused by the errors for the import permits.

The comment deadline is August 8, 2016. ■

More Onerous Trophy Seizure and Forfeiture Procedures Proposed

On June 17, 2016 US Fish & Wildlife Service (FWS) noticed a proposal to "revise its seizure and forfeiture regulations." 81 FR 39848 through 39865. The comment period ends August 16, 2016. There was no prior scoping notice of the revisions. It is not responsive to the multiple requests by Conservation Force for fairer treatment--not at all. It is just the opposite. It tightens the screws on hunters like never before. It "streamlines" the forfeiture process.

We cannot cover the full extent of the revisions here and now, but the following are some alarming highlights. FWS clarifies that any permitting



error invalidates an import permit and converts the trophy to unlawful contraband. It is not a valid permit regardless of the harmless nature of the error, the innocence of the owner or his expert agents or the issuing government. The innocent owner, harmless error, proportionality or excessiveness of penalty (potentially a \$150,000 trophy forfeited for a harmless government clerical error) defenses provided by Congress through the Civil Assets Reform Act (CAFRA) are all said not to apply. They do provide protection in court or with a solicitor.

One important change is a

property owner can no longer file a claim for judicial relief after a petition for remission has been filed with the Solicitor. Property owners have switched over to claims after filing petitions for remission when Solicitors have taken a year or two to render a decision, but they will no longer have that protection. Also, in cases where there was disagreement on the law as applied in a Solicitor's discretionary denial of a petition, property owners have been able in the past to take the matter to court by filing a claim after the Solicitor's unfavorable denial. This has been very important in many seizures where the seizing agent has not supplied any statement of the facts in the seizure report or notice. Without a statement of the factual reasons for

the seizure explaining the violation one cannot defend his property. All too often a petition for remission has had to be filed as a discovery tool to learn what the facts are behind the seizure.

A Director's Order has provided that the factual basis be spelled out but that is almost never followed, so property owners too frequently do not know what their agents did wrong. They do not know that it is a legal issue that more properly belongs before a court than the Solicitor. Notice that you have violated the ESA because your

permit violated CITES without notice of the factual elements of what was done wrong is little help. Frequently, some seizures are just for purposes of investigation. Moreover, the proposal provides that "During the remission consideration, a valid forfeiture is presumed." Frankly, we are not yet sure what that means.

The proposal would limit when a supplemental petition or request for reconsideration of a Solicitor's petition denial could be filed to when you have "new evidence that has

not been previously considered." In short, remissions are not favored and administratively rearguing a petition denial is discouraged. Worse, there is a great deal of language in the proposal making it clear that remissions are not to be favored or routinely granted for innocent mistakes, harmless errors, or other equity concerns.

In our view it is time for more political intervention to protect hunters' interests and the integrity of foreign conservation strategies that are dependent upon sustainable use. ■

Conservation Force Creates its First Chapter: Taxidermists For Conservation

Thanks to the energy and hard work of John Janelli, a taxidermy historian and taxidermist from New Jersey, Conservation Force has its first chapter. Not happy with just serving game conservation through raising its value to hunters and rural people alike through quality taxidermy, John Janelli has been a supporting member, project partner



The back of the Akeley monument depicts his work.

and advisor to Conservation Force for over a decade. Now he wants to raise funds for conservation partnering. The Taxidermists for Conservation chapter/division is designed to do that and more. It is international in scope. Although John Janelli is one of the named plaintiffs in the New Jersey suit, the chapter is not a party nor need it be. The chapter is about fund raising for conservation and related education activities. Spearhead John Janelli is the past president of the National Taxidermists Association.

On May 24, 2016 the new chapter dedicated a monument to Carl E. Akeley ("The Father of Taxidermy") in honor of Akeley's 150th birthday in Clarendon,

New York. It was the culmination of two years of work and planning. The celebration was hosted by the Clarendon Historical Society and had arisen from the celebration of Akeley's birthday two years before. The turnout is said to have been phenomenal with taxidermists and others from across the country. It included numerous speakers, a 15-gun salute, and music from composer Jerry Goldsmith's score from the movie "The Ghost and the Darkness." John Janelli gave a ceremonial speech before

he helped unveil the permanent monument, including reading a message from me on behalf of Conservation Force.

Appreciation is owed to all, including the staff and members of the Explorers Club, taxidermy.net, Attorneys Mike Orapallo and Richard R. Capozza of Hiscock & Barclay, LLP, The United Taxidermists Association, National Taxidermists Association, the America Museum of Natural History, Larry and Kathy Bloomquist, Conroe Taxidermist and Michael Simpson, and many others too numerous to list here.

The local paper had a great article that can be read at orleanshub.com/news2016/Akeley-the-famed-taxidermist-from-Clarendon-celebrated-with-new-memorial.htm. ■

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John Janelli, center behind monument stone, is surrounded by the taxidermy artists and industry professionals who traveled to Clarendon for the unveiling ceremony.



Conservation Force Sponsor

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