May 3, 2012

Sent by Federal Express to:
Public Comments Processing
ATTN: FWS-R9-IA-2010-0083
Division of Policy and Directives Management
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And electronically through the Federal eRulemaking Portal:
http://www.regulations.gov
(keyword box entry) Docket No. FWS-R9-IA-2010-0083
(Proposed Rules link) then "Send a Comment or Submission"

RE: Comment on 77 FR 14200, March 8, 2012, the *Proposed Rules* entitled *Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Fifteenth Meeting of the Conference of the Parties to CITES and Amending 50 CFR Parts 13, 17 and 23.*

Dear Sir,

These are comments filed for and on behalf of Conservation Force, Dallas Safari Club, Dallas Ecological Foundation, Houston Safari Club, African Safari Club of Florida, the International Professional Hunters Association (IPHA), Professional Hunters Association of South Africa (PHASA), National Taxidermists Association, Louisiana Chapter of Safari Club International, Alabama Chapter of Safari Club International, International Foundation for the Conservation of Wildlife (IGF), the International Counsel of Game and Wildlife Conservation (CIC), Wild Sheep Foundation and Grand Slam/OVIS. All are hunting-based wildlife conservation NGOs.

Conservation Force is a longstanding International CITES Observer that attended CoP 14 and 15 and was a participating member of the CoP 15 Trophy Definition, Purpose Code Validation and other relevant Working Groups. The IPHA is an International Observer that attended CoP 14 and 15 and was also a member of the CoP 15 Trophy Definition Working Group. The CIC is an international, inter-governmental NGO CITES Observer that attended CoP 14 and 15 and also served on the Trophy Definition Working Group at CoP 15.

These comments are made in opposition to a number of the proposals or procedural conditions thereof and in support of other parts. The comments are in the order in which they appear in the Federal Register Notice, 77 FR 14200, March 8, 2010. The proposals are very serious and if adopted as proposed will have serious negative consequences on the safari-based conservation system of developing

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countries for which there is no conservation substitute. Some of the procedural conditions are far too onerous and unnecessary.

Initial Observations

The title of the proposed rules is much narrower than the proposals. The title only cites CoP 15 while the first sentence of the content also incorporates CoP 14 "and clarifying and updating certain other provisions." In fact, these revisions of 50 CFR Parts 13, 17 and 23 would do far more than "bring U.S. regulations in line with revisions adopted at the most recent meetings of the Conference of the Parties" as represented. Parts of the proposals are unilateral stricter domestic measures beyond anything suggested at CoP 14 or 15, like the procedural conditions being imposed upon issuance of replacement documents and import of sport-hunted trophies.

The proposals also fail to incorporate important recommendations of the Parties at CoP 15 like revision of Section XIV(f) of Conf. 12.3, *Acceptance and Clearance of Documents and Security Measures* providing that the Parties "should liaise" and consider "extenuating circumstances" when there is an irregularity in the endorsement or validation of export permits. That should be incorporated.

There are some troubling provisions in USF&WS's proposed revision of its CITES regulations. It is made more important by USF&WS Law Enforcement's position since the revision of FWS internal CITES regulations in August 2007 that any irregularity of any kind invalidates the permit and converts the otherwise lawful hunting trophy into "contraband" in which the owner has no rights or "protectable property interest" regardless of the kind, level or cause of the omission, error or violation.

In March of 2008, the FWS *Service Manual* was also changed and now has a provision that seizure (forced forfeiture) should be considered first before any other enumerated alternative when there is a technical violation of any kind whatsoever. In effect and practice, trophy imports with any procedural or clerical irregularity are no longer simply "subject to seizure," they are seized without exercise of discretion or judgment of any kind as a matter of course. This is being applied even when the underlying cause is government-to-government disagreement, or worse, an absence of communication between respective government (Party) authorities. It is also occurring without any regard for international diplomacy or the Act of State Doctrine of the United States or the innocence of the trophy owner. The proposed procedural requirements are full of traps and snares that are bound to burden lawful trade and cause violations and forfeiture of otherwise lawfully taken items of conservation hunting. Since the FWS has given Law Enforcement the directive to vehemently enforce the regulations unconditionally without discretion or forgiveness of any kind, it is more important that procedural conditions and regulations be reasonable and necessary in the first place.

We urge you to stop beating up on recreational hunters for technical violations. These proposed regulations create and engineer violations and burden the underlying trade-dependent conservation programs. The harsh enforcement guidance has caused a lot of hardship, hard feelings and disrespect. When America's business and professional leaders are treated as violators and their property taken unnecessarily for innocent mistakes of a mere technical nature, or when they are presumed to be knowingly acting unlawfully, they may never forget it – nor should they. United States hunters pay high

prices for trophies because the memorabilia is so very important to them and because once lawfully taken they have the expectation of getting their trophy home. Conservation depends upon that value and expectation. It has reached a point that regulations and unleashed Law Enforcement are having a negative conservation impact. Tens of millions of dollars of trophies (cost of acquisition) are being forfeited. These new proposals seem to lend themselves to technical violations, therefore seizure and forfeiture of trophies. They need to be made more procedurally user-friendly instead of designed to be more onerous to navigate.

FR page 14203 and 14206

Prohibitions (23.13): This makes it "unlawful" to use a trophy after import contrary to 23.55.

It also makes it unlawful to "use any specimen...for any purposes contrary" to conditions imposed under 23.555 for I, II and III Appendix species. This is too broad as 23.55 only applies to Appendix I and II species and only Appendix II by a listing annotation. We oppose as written.

The prohibition in 23.55 that prohibits use after import "only for noncommercial purposes" is too long-term. It should be "only for primarily noncommercial purposes" at the point in time of the trade. That is what the Convention provides. That is the purpose and point in time of conservation interest. That is what the "take" is permitted for by the country of origin. Sport hunting is lawful, desirable trade. Long-term uses after that point in time must be the subject of some other law, like the AECA prohibition of re-export.

The intended use at the time of import should be primarily noncommercial, not the initially unintended uses in "subsequent" years or after lifetimes of multiple owners, like after the hunter's death. This seems to make it "unlawful," thus a criminal violation, to donate one's Appendix I trophies to a museum of natural history that charges admission, a university with an admission fee, sensory safari or for a succession heir to do the same after one's death. The initial use to which the trophy is put should be controlling and the primary purpose at the point in time of the trade should govern. It should not be a violation of law to place one's trophy in one's own office or place of work or loan for public display at a private educational institution, etc. Subsequent unintended uses should not be violations. You can't omit a term in the Convention ("primary") simply because it is difficult to enforce. Subsequent uses by third parties after one's own death are hardly relevant unless there is proven subterfuge and if it were it would be of no conservation consequence. The concern of CITES is the "intended use" at that point in time, i.e. purpose and intent at time of trade. The only point in time that is relevant to the commission of a violation is the time of import.

There is at least one Federal Court case on point in which elephant tusks years after import as hunting trophies were sold by a taxidermist to recover his storage costs. The Court reversed the criminal conviction because the CITES concern was the intent at the time of import, not later uses.

The proposal that makes subsequent uses contrary to the conditions on the import permit a violation of law does not state if this is limited in interstate activities such as interstate sale or barter, or also includes sales and for-profit uses of any kind wholly within the state of residence of the hunter. This

needs to be made clear. There is a lot of confusion in the community about whether sales wholly within one's state of residence are unlawful when such occasions arise long after the initial import and the initial use and purpose has passed.

How may I use a CITES specimen after import into the United States (23.55)

The Convention and associated Resolution Conf. 5.10 only prohibit imports for uses that are "primarily commercial" at the time of import. Primarily commercial is time-sensitive, not in the long-term future or forever. The proposed regulation ignores the language of the Convention and prohibits secondary uses or purposes forever. It needs to apply to initial purposes only, not to uses of heirs and third party owners decades after the import for personal use at the time of the import. CITES regulates international trade, not trade after that trade has come to rest.

Of course, we agree with the suggested provision that Appendix I items and Appendix II items with restrictions on use that pre-date the listing restriction can be put to the use that was lawful at the time of their import or anytime thereafter. The Convention does not control "subsequent uses" at all. We also agree that such is not of any conservation/biological consequence ("no conservation need for requiring....") The trade of lawfully taken trophies is generally beneficial and not of concern. We suggest that trophy trade deserves preferential treatment because of the 1.) conservation value and 2.) lack of biological consequence after lawful import. Unnecessary restrictions on long-term use have a negative effect on the trade and the benefits of the trade.

The Service has adopted a position advanced to it by animal rights/protectionist NGOs that devalues legitimate, desirable trade. We have copies of those original suggestions obtained through FOIA requests.

FR Page 14203

Signature Stamps (23.23(c)(16)):

We fully support the proposal to "allow the use of official signature stamps, in recognition of this global practice."

"The recognition of (a)...global practice" is sound. We urge the FWS to do the same in other instances cited below.

FR Page 14204

Validity of CITES documents (23.26): The proposal states: "If we receive a CITES export document on which the actual quantity exported has not been validated or certified at the time of export, we may request verification of the document." This is far short of what needs to be adopted. Although this impliedly recognizes in part that absence of endorsement by itself should not be reason for refusal, more is needed.

Validation or Endorsement

The proposed regulations purport to be an update to adopt Resolution revisions of CoP 14 and CoP 15, and discuss contacting the exporting country when the export document is not validated, but fail to include the CoP 15 revision of Section XIV(f) of Conf. 12.3, *Acceptance and Clearance of Documents and Security Measures.* That Resolution revision provides as follows:

> If the export document has not been endorsed at the time of export, the Management Authority of the importing country **should liaise** with the exporting country's Management Authority, considering any extenuating circumstances or documents, **to determine the acceptability** of the document.
>
> Res. Conf. 12.3 (Rev. CoP 15) – Emphasis added.

This should be incorporated for adoption in the proposed CITES regulations of the USF&WS subsection (g) that follows, which provides that the Party that "refuses to accept a permit...for export...immediately inform the exporting...country," so the FWS needs to immediately initiate the liaison rather than first seize the trophy and seize the trophy as a first choice of action.

Recreational trophies traditionally have not been validated by most exporting countries. Nevertheless, the USF&WS has phased in the requirement in its 2007 regulations. Trophies valued at more than $100,000.00 have been seized when they consist of only two parts, each part is tagged and the authenticity is undisputed. In one instance, the country of Pakistan did not even have a place for endorsement on the front of the printed export permit form, but a markhor trophy was seized and the petition for remission was denied when no real harm arose from the technical violation. (The pleas of the Pakistan Authorities not to seize the trophy and of the importance to the program were not responded to be FWS.) In another instance, an argali was forfeited because a fellow hunter carrying the trophy home as accompanied baggage could not get the temporary officials at the airport of departure to endorse the export permit. Seizure and remission petition denial and forfeiture is now a matter of course when the technical violation is of no biological consequence or suspicion of the trade. Unforgiving, immediate seizure enforcement is contrary to this recommended and agreed upon revision at CoP 15.

Ironically, the USF&WS chaired the working group that made this 12.3 revision and agreed with the Secretariat with the language that the importing country "should liaise" instead of "may liaise," CoP Com. II, Rec. 9, Summary Record of the Ninth Session of Committee II, 21 March 2010. *Review of Resolutions.*

The FWS should adopt this CoP 15 revision in spirit as well as in fact. Trophies of dependent conservation programs need to be treated preferentially to maintain their price, i.e. the conservation revenue.

The trophies that were seized in the above two instances within the past 12 months (argali and markhor) cost over $200,000.00 to acquire. Their parts were only horns and skin. There was a hunting

license in each instance and both export and import permits. The validations, had they not been omitted due to the circumstances, would have been perfunctory, not necessary. This has been taken to an extreme never envisioned, but more importantly, wholly unnecessary.

We urge you to add this Resolution revision from a Working Group you chaired to the regulations proposed. The international outcry at CoP 15 should not be wholly ignored. The term "may liaise" was changed to "should liaise" and "the U.S. agree with this suggestion," CoP 15, Com. II, Rec. 9, pg. 1.

The endorsement requirement is not actually referenced in the text of the Convention. It is a permit format that was adopted by the 1973 Plenipotentiary Conference. Endorsement at time of shipment adds significantly to the real costs incurred by Parties and is contrary to the intent of CoP 15, Doc. 17, which explored ways of reducing implementation costs. There is little question that the Parties at CoP 15 decided lack of endorsement by itself should not be reason to refuse import and, it follows, should not be reason for forfeiture of a trophy.

FR Page 14205 - 14206

Replacement documents (23.52), FR pg. 14205 of the proposed revision of regulations, provides:

> ...Section 23.52 contains provisions for issuance of acceptance of replacement CITES documents (when lost, damaged, stolen or accidentally destroyed). We propose to **clarify** the procedure and amend the **criteria** for issuance and acceptance of replacement CITES documents....Since the publication of our 2007 CITES regulations in which individuals have significantly delayed submission of required documents for clearance of a shipment while they try to obtain a replacement document without our knowledge. In addition, importers or their agents have attempted to submit 'replacement' documents when no document had ever been issued or when the original document was invalid. We propose to more closely **align the criteria** for issuance and acceptance of replacement CITES documents in the United States with those for issuance and **acceptance of retrospective** documents found in section 23.53. Proposed amendments to the criteria include: Requirements that specimens are presented to the appropriate official at the time of import and that request for a replacement document is made at that time; the need for proof of original valid documents; and a statement of responsibility....The amendments we are proposing to this section will **clarify** the requirements and procedures for obtaining a replacement CITES document. (Emphasis added.)

The verbiage of the proposed regulation procedure itself follows:

> 23.52 What are the requirements for replacing a lost, damaged, stolen or accidentally destroyed CITES document?
>
> (d) Criteria. The criteria in this paragraph (d) apply to the...**acceptance** of...foreign documents...

(2) **For acceptance** of foreign CITES replacement documents in the United States, **you must provide sufficient information** for us to find that your proposed activity meets all of the following criteria:

(i) The specimens were **presented** to the appropriate official for inspection at the **time of import** and **a request** for a replacement CITES document was **made at that time**.

(ii) The importer or the importer's agent submitted a signed, dated, and **notarized statement at the time of import** that describes the circumstances that resulted in the CITES document being lost, damaged, stolen or accidentally destroyed.

(iii) The importer or the importer's agent **provided a copy of the original** lost, stolen or accidentally destroyed document **at the time of import** showing that the document met the requirements in section 23.23, 23.24 and 23.25.

(Emphasis added.)

Our Concerns and Opposition

The four new procedural conditions and their sub-parts call for a miracle. All the conditions are opposed.

The statement that FWS "propose to more closely align the criteria for issuance and acceptance of replacement...documents...with issuance and acceptance of retrospective documents..." is foreboding. The CITES Resolution and FWS regulations on retrospective permits disfavor issuance of the permits. ("The Parties intended for this provision (retrospective permits) to be used rarely and only under very narrow circumstances," 72 FR 48427, Aug. 23, 2007.) There is no call for that disfavor with replacement permits of recreational hunting trophies.

There are substantial procedural barriers and great FWS resistance to acceptance of retrospective permits and the process has proven tedious. Frankly, the correction of clerical errors and technical errors should not be made so difficult. Making replacement permits as difficult as retrospective permits is compounding the wrong. Accidental loss, destruction or theft has never been thought to warrant unnecessary "red tape" for simple replacement. The Parties have not adopted any Resolution, made any Decision or otherwise suggested unnecessary restraints for replacement permits. This proposal is not adoption of any CoP Resolution, clarification or updating. It is an invention that needs to be made less procedurally onerous or abandoned entirely.

The reality is the more procedural conditions put on acceptance, the more to be skipped or missed or untimely performed and cause the resultant seizure and forfeiture of the trophy. Because it is made so time-sensitive ("at that time"), and because that timeline is hard, if possible at all, to meet, the new criteria is too challenging and fatal.

The conditions and timelines combined will be challenging to fulfill – too challenging for the busy importer, busy professional broker, and beyond the capacity of any busy lay individual. It is imperative to remember that until March 2008 when the *Service Manual* was changed, the procedure was to give importers of hunting trophies a 30-day "Grace Period" to correct errors and to replace lost, stolen or destroyed documents. The change in practice was made without notice or publication to the brokerage community so the justification for this hardened procedural proposal is not sound. The problems were self-induced by the FWS by its own change in practices that has only recently been discovered.

How can "a request for a replacement CITES document" be made at the "time of import"? It is premature to request a replacement document until a search has been made and the confirmation of the loss, theft or destruction has been made, and the cause of the loss, theft or destruction has been determined. (Imagine requesting an export country to issue a new permit before a search for a lost permit or swearing in an affidavit what happened and who is accountable before you even know. Who is expected to swear until the facts are known?)

It also takes time to contact the export country authorities through agents, brokers, taxidermists, hunting companies or whatever, who in turn contact their CITES authorities – if and when those authorities are available. It also must be done across the world in different time zones, in consideration of holidays, weekends, and other obligations on both ends. Considering the "strict liability" enforcement posture of FWS, there must be more flexibility in the proposed rule, else this be an impossible procedural condition.

How can the importers or importing agents submit "a signed, dated and notarized statement at the time of import that describes the circumstances...."? It takes time to learn of "the circumstances" after learning of and confirming the loss, damage or theft. It may be several days, particularly holidays and weekends, before the importer even learns of the import. If the documents are lost, the shipment may itself be lost along with the documents that identify it, or set in place without the broker learning of its arrival. The exporter and all those in between in the transit route have to be contacted to learn of the "circumstances" and they are in different time zones and dates. This procedural condition is a contradiction because it will add to the necessary delay.

There must be a reasonable time to ascertain the loss, to make a search to assure there has been a loss or theft, to learn of the shipment's arrival, time for the importer or the import agent to learn of the arrival, to learn of the missing or destroyed documents, to confer with all parties, to have a holiday and weekend off, to handle more than one shipment, to go to court for jury duty, to attend one's mother's wake, and far more. One can't be asked to swear out a "notarized statement" without being given a reasonable time to ascertain the circumstances being sworn to, to appear before a notary, etc. all on the date of import.

In too many cases the importer will not have a copy of the missing document at the time of import, nor can he get the document from across the world or from the client who is not available immediately. He is unlikely to have a copy of the validation or endorsement in many instances because that is a final act of the exporting government on the way out without any opportunity for copying. It takes extra time to

get a copy of the validated export permit after the need arises, if possible at all. The FWS is in the best position to correspond with and get a lost item government-to-government.

This and most, if not all, of the conditions should not be made so time sensitive. The conditions will add to the delays. Copies or the missing original documents can be provided at a date later than the date of the discovery upon import. Moreover, the importing country authority is supposed to immediately contact the exporting country when documents are lost or stolen and is itself in the best position to more immediately confer with the exporting country to get a copy of the export documents issued by the country even if really needed that early.

The cause of the loss or destruction is not material to the right to replacement, so one certainly should not be deprived of his or her property because they don't spontaneously know and swear before a notary "a statement of responsibility" (pg. 14206) particularly when responsibility is not a condition of replacement under the Convention or any Resolution and, additionally, cannot yet be known simultaneously and immediately upon import. Immediate swearing to the unknown (what one cannot yet know) is not reasonable criteria. It may prompt false swearing out of necessity and would be a *prima facia* case of false swearing.

All of these things cannot be done simultaneously at the exact time of import. If the "time of import" is meant more broadly, then the regulation should say so and define the period. That cannot be overemphasized with the current seizure practices of FWS. Nor should there be requirements for the ultimate "acceptance" of a replacement document.

What if the loss is not discovered until the shipment is opened or inspected? USF&WS inspectors can't inspect shipments immediately at the "time of import," but this regulation requires that of others as written. This proposal is really a prohibition against issuance of replacement documents. Moreover, the represented need for the onerous timelines because of the bad practices of import brokers were in fact the written terms and practices in the *Service Manual* before March 2008 and practices in most of the ports. The FWS has changed its practices without notice. It had long been the practice to take up to a 30-day "Grace Period" to administer losses.

If the FWS requires all these conditions before acceptance of a replacement permit, then it should create its own optional form with all the steps and timeline enumerated. A blank form for notarized affidavit could be included to reduce the costs and ensure it complies. The dates of each separate step should not be the date of import. Rather, it should be no less than seven days (the day of discovery, a 2-3 day weekend or holiday and at least three days or more to complete all the procedural steps and obtain responses from third persons who don't themselves have artificial deadlines). The form should have a "good cause" space following each separate step to explain why the particular step was not completed within seven days of import. The regulation also needs to expressly provide that "good cause" will be accepted by Law Enforcement inspectors in each port. The regulation should also be phased in over a several year period to allow for the year or more for the form to be approved, circulation and education. Such a form may reduce costs because the user may quickly see for him or herself that it can't be done and just abandon the trophy from the start.

We oppose the proposal entirely. Regulations should be proposed to facilitate retrospective and replacement permits, both, not to make it an onerous undertaking. You are seriously burdening favored trade. This undermines CITES.

FR Page 14205

Captive Breeding Registration Renewal: 23.46(f) "renewal...should be submitted at least 3 months before...expires...."

One of the most frequent reasons for accidental expiration of captive-bred registration and take permits is the fact that they must be renewed at different times before expiration. The filing of a renewal for expiration should keep the permit in effect. Regulation (f) requires receipt of renewal three or more months before expiration! In the absence of such a rule, the permit would remain in effect until renewed or denied if it is received at any time before expiration. We think that is the way it should be. The 3-month period is opposed.

FR Page 14207

Skin tags for bobcat, other, Canadian lynx, gray wolf, brown bear as well as crocodile and alligator (23.69(c) and 23.70(e):

The regulations suggest that replacement tags can only be obtained if the skin tag has been accidentally or "inadvertently removed" when the Service knows well that the tags have to be deliberately removed to protect from tearing the skin in the fleshing and tanning process. Those deliberately removed tags are lost, destroyed and stolen as well, so what is to be done in these instances? As proposed, this is opposed.

Sport-hunted Trophies (23.74) FR pg. 14208

We are so very happy to see a return to the common definition of the term "trophy," but do not agree with the statement of history or the new trap-like procedural burdens and conditions obstructing trade of recreational trophies. The proposal also does not make it clear that the purpose coding will revert back to being "trophy" (T) rather than "personal" (P). That is important considering the statistical confusion from the contradictory coding and the number of trophies seized because of the continuing purpose code irregularities caused by the 2007 regulations.

Opposition

First, we do not and have not ever agreed that the 2007 regulation employed the "commonly understood meaning of the term." To the contrary, a sport-hunted trophy is and has always been one "taken sport hunting" by a sport hunter, i.e. not for primarily commercial purpose. It has had more to do with the purpose and nature of the take than the animal part and crafting of any part taken. Nor did any other wildlife regulation define trophy any differently than the common meaning of memorabilia or parts of any animal taken in a sport hunt. The cited polar bear language by one junior Congressman

concerned "internal organs" use for medicinal purposes by third parties, not external parts. That was a special concern under the Marine Mammal Protection Act and cannot rationally be cited as determining the common meaning concerning external body parts or their use. A great deal of, if not most, taxidermy work done with trophies in Africa have always been crafted items. For example, gun covers and cases, jewelry, clothing, bookends, buckets, stools, et al. Nothing in Res. Conf. 2.11 (Rev. CoP 9) has ever suggested otherwise. This was confirmed at CoP 15.

As to the proposed regulation, we are gravely concerned with the "conditions under which" USF&WS "will allow the import into the United States of manufactured items as part of a 'hunting trophy.'" There are three conditions. The proposed regulation states that "trophy"

> ...[i]ncludes worked, manufactured or hadicrafted items made from the sport-hunted animal only when (i) such items are contained **in the same shipment** as raw or tanned parts of the sport-hunted animal and are for the personal use of the hunter; (ii) The quantity of such items is no more than could reasonably be expected given the number of animals taken by the hunter as shown on the license or other documentation of the authorized hunt accompanying the shipment; and (iii) The accompanying CITES documents (export document and, if appropriate, **import permit**) contain a **complete itemization** and description of all items included in the shipment.
>
> Emphasis added.

These three conditions in the actual proposed regulation are far more than suggested in the general description of the change in the content of the Federal Register Notice.

First, we are confounded by the (i) requirement it only be imported for personal use. That is understood for Appendix I listed species, but not Appendix II or III listed species. We presume, but it is not clear, that those worked parts of the sport-hunted Appendix II and III animals can be imported regardless of the intended use but should be purpose coded as "P" or "T/H," or else they would be seized. The regulation does not state that, but must if seizures of innocent hunters' trophies are to be avoided. That too is problematic because "[f]or Appendix II and III specimens the purpose of any transaction, including import, is completely irrelevant for CITES purposes." *The Evolution of CITES*, 9th edition – 2011, Willem Wijnstekers, page 161. It is not required by the Convention. It is only confusing for all concerned and constitutes a trap for seizure and forfeiture. We suggest it is better to have a few export permits miscoded on Appendix II export permits than to confuse record-keeping and trade statistics between those taken sport-hunting and taken otherwise. Its connection to the regulated nature and purpose of the hunt is more important for Appendix II species than its ultimate use. We urge that if purpose coding is to be mandated and grounds for seizure, then trophies should be purpose coded as trophies, but the proposal does not making this clear. Regardless, the regulation should expressly revise or clarify the related purpose coding to avoid the inevitable seizure and forfeiture of trophies from these kind of hyper-technical regulations.

We are also concerned with the requirement that a crafted or utilitarian item only be shipped with raw or tanned parts. Again, if it is Appendix II, who cares? If I or II, it may be the only part or parts, like painted horns. If it is pencil-etched elephant tusks, a gold or silver plated skull or the like, the criteria is problematic. Whole elephant tusks shipped along with elephant feet footstools may be subject to seizure. Are bleached skulls, bones and tusks considered raw parts to satisfy the regulation? In some instances, the hunter only wants the crafted parts, like gun sheaths, knife sheaths, jewelry, etc. like from a tuskless cow elephant. In that case, production of the license should suffice.

The regulation needs to make clear that taxidermied parts will suffice in lieu of raw parts. As it now reads, the crafted part must be accompanied by raw, not taxidermied, parts. The painted skull of a leopard will be seized if it is shipped with the leopard mount because the mount is not raw, for another example. This ends up being a law against foreign taxidermy when that taxidermy revenue is an important conservation concern of local people. As written, elephant hair bracelets would have to be crafted with tusks or raw skin instead of carried as carry-on personal baggage.

This regulation does not prohibit fraudulent trade of non-trophy parts as much as it hinders trophy trade. We urge you to stop punishing innocent, lawful owners of trophies.

We understand (ii) and feel that it is the only condition that should be added, but it is too broad. If the items exceed the number then those items exceed the parts. That said, the whole shipment should not be subject to seizure and forfeiture, only the item that is excessive, such as a third ear, second skull, fifth leg, second tail. At worse, all three ears, all five feet, both tails, both skulls, but not other parts not in question, should be seized. Items do get included by error, in which case only that extra item should be refused or returned. There should not be strict seizure and forfeiture of the whole elephant because of the mere appearance of an extra elephant hair bracelet or the like. A violation should not be presumed. Likewise, if an Appendix II or III species, it should not apply at all.

Item (iii) is particularly objectionable. The requirement of a "complete itemization and description" for Appendix I import permits is problematic. Those not "completely" described will be seized and forfeited. The importer often does not have a "complete" description at the time of applying for the import permit. There is no place or space on import permits, import permit applications or export permits to completely describe worked items. If it is an Appendix II export permit, it is of no concern whether the items is completely described. If it is a threatened ESA-listed game animal on Appendix II of CITES, then it is exempt from this regulation under 9(c)(2) of ESA.

The more regulations of this kind, the more seizures and forfeitures. Such seizures act as a tax on conservation-based trade and tend to reduce the price of badly needed revenue from the hunting activity. It discourages and undermines sustainable use-based conservation strategies.

Import and export forms also do not contain space for complete descriptions and never have. It will take FWS a year or more to change its own forms to create such a space and perhaps a second page. There has never been any space on any permit application or permit form for the information now being mandated.

FR Page 14208 and 14223

Quota Year and Special Regulations:

Regulation 23.74(e), "Marking or tagging," provides that the tag should contain the "annual quota" of the year taken for leopard, markhor and crocodile. On the other hand, the black rhino is to be marked with the annual quota for the year of export rather than the year of harvest. The elephant regulation does not indicate whether the year of take or the current year of export is intended. Instead, it states "the last two digits of the year" and the "serial number for the year in question" without stating what year that is, the year of harvest or current year of export. We suggest that the year of harvest in all cases be used for consistency and as suggested in CoP 14 Doc. 36 Annex, *Guidelines for Management of Nationally Established Export Quotas* and Res. Conf. 14.7 Annex, Sections 20 and 21, *Quotas not fully utilized in a particular year.* Those *Guidelines* provide for the use of the year of harvest quota rather than the year of export for hunting trophies because that is of the most direct biological significance and conforms with the required data on the tagging. This is an instance in which the FWS should recognize and follow the "global practice" like it has for signature stamps on page FR 14203 of this Notice.

The dispute in a minority of the ports of entry in the United States over the appropriate quota, the year of take or the year of export, that started in 2011 and carried over in 2012 should be resolved here and now in these proposed regulations. The dispute has caused havoc and led to a host of secondary problems of a dimension never before experienced. These proposed regulations purport to incorporate the developments at CoP 14 but fail to incorporate the carry-over practices of quotas of the year of harvest and its formalization in Res. Conf. 14.7, Annex section 2, 20 and 21. These proposed regulations should include and adopt those Resolution Annex provisions to allow the use of the quota in the year taken when "it is not possible to ship them in the year in which they were obtained." The year of take or quota for the year of take "provide[s] a [more] meaningful tool for monitoring and controlling trade..." 72 FR 20613, June 1, 2007. The FWS was also on the CoP 14 Working Group, but you would not know it from these proposed regulations that have omitted that important recommendation.

Conclusion

We are particularly concerned with the failure of the proposed regulations to incorporate the "liaise" recommendation of Res. 12.3 (Rev. 15) for validation and the carry-over year of take quota recommendation of Res. Conf. 14.7 Annex, 2, 20, 21. We are greatly concerned that the procedural requirements for replacement permits are prohibitive and the reasoning for such measures fails to recognize that it was the Service's own change in practices in its *Service Manual* that has caused the perceived problems. The return of the definition of trophies that is more in line with custom and practices (contrary to the representations in the proposal) is welcome, but the procedural conditions are onerous, unnecessary and opposed.

We urge you to stop manufacturing cause for forfeiture of trophies and not to adopt regulations that are not necessary and serve as violation traps for innocent owners.

Non-commercial trophy trade should be exempted from the strict existing retrospective permit (particularly correction of government clerical errors and omissions) and proposed replacement permit conditions. Likewise, they should be exempt from endorsement/validation requirements which really serve no purpose in such trade.

The use of Appendix I trophies long after their initial import, purpose and use, is not governed by CITES and should not be subject to CITES regulations. It may be a legitimate concern if re-exported from the United States, but long-term uses by heirs and subsequent owners wholly within the United States are not a CITES concern.

Respectfully submitted,

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