



“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

□ Special Report

Important New Development in Trophy Seizure Crisis

■ In October, leopard trophies began being seized for a new reason. Leopard tags and export permits that recite the quota for the year of the trade or export rather than the year of the hunt are being treated as invalid by USF&WS inspectors.

The year the trophies are taken hunting is different than the year they are exported when trophies are taken late in the year and when trophy export is delayed for any reason.

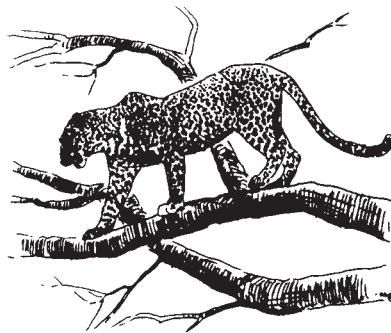
The CITES Convention itself does not have such specificity but the Parties have adopted contradictory Resolutions that recommend the use of the quota for the year taken and also the “current” year of export.

The instructions on the back of the export permit form specify that the **current calendar year** and the **current** annual quota be used. These instructions for the export permit form were adopted in Resolution 12.3 (Rev. 15), and that Resolution was reconfirmed as recently as March 2010 at the 15th

Conference of the Parties.

Independently of the instructions on the back of the export permit form, Resolution 12.3-8(b) states:

(b) When a Party has export quotas allocated by the Conference of the



*Parties for specimens of species included in Appendices I and II, it states on each export permit the total number of specimens already exported in the **current year** (including those covered by the permit in question) and the **quota of the species concerned**.*

Contradictorily, Resolution 10.14 “recommends” that leopard export permits allow the import of leopard trophy imports “only if each skin has a self-locking tag attached which indicates the...number of the specimen in relation to the annual quota and the **calendar year in which the animal was taken in the wild** – for example ZW 6/500 1997 indicating that Zimbabwe is the State of export and that the specimen is the sixth specimen taken in the wild in Zimbabwe out of its quota of 500 for 1997 – and is the same information as is on the tag given on the export document....”

In September 2007, the USF&WS’s International Affairs Program and Law Enforcement Division adopted the latter position in the Code of Federal Regulations, that 100 pages of internal CITES regulations that readers have already heard so much about in this Bulletin.

As of now, we are encountering trophies being seized from Tanzania,

Zambia and Zimbabwe in ports from San Francisco to New York, but this may only be the leading edge.

To avoid detention of your trophy and possible seizure and forfeiture, you must comply with the USF&WS regulation in the U.S. Code of Federal Regulations that has adopted the year-taken-recommendation and made it a requirement under U.S. law and policy, apparently just for bureaucratic consistency. We don't know that it makes any difference biologically which year is cited as long as it states either year and gives the number of the quota within that stated year. It is a harmless difference.

If your leopard arrives in a U.S. port with an export permit that uses the trade quota for the year traded (“current year”) instead of year taken, the USF&WS inspector may seize it for violation of CITES, which is implemented by the ESA, therefore it is a violation of the ESA, which in turn has a provision that **any** violation whatsoever subjects the item to forfeiture at the discretion of the USF&WS.

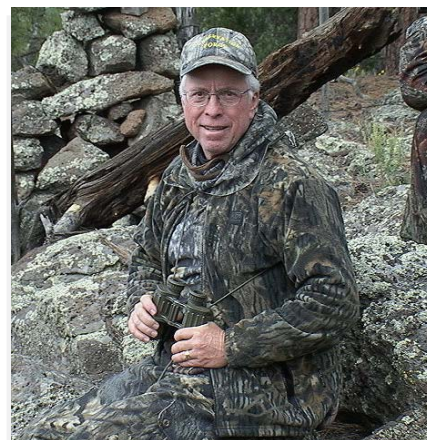
This is entirely an inter-governmental problem for which we don't believe the trophy importing hunters should be punished.

What is the Cause of the Seizure Crisis? Conservation Force has been inquiring to determine the cause of the punishment of innocent hunters trend. In 2000, Congress passed the Civil Assets Reform Act, CAFRA, expressly to protect innocent owners of property from fundamentally unfair forfeiture. It expressly provides that “no innocent owner shall be deprived of his or her property under ‘any’ forfeiture statute.” Innocent owners are those that did not know of the violation but also those that upon learning of the violation took immediate steps to “attempt” to correct the violation. It provides for a court hearing, dispenses with the requirement of a bond for 2½ times the value of the property before going to court, includes a specific right to challenge the excessiveness of the seizure, provides notice and new cutoff dates against the seizing agency and more. It was Congress's response to growth in forfeitures and concern for funda-

mental “due process” fairness. One hitch: Congress added a section that it did not apply to property that is “contraband or illegal to possess.”

After Freedom of Information Act requests and the review of thousands of pages of records of the Law Enforcement and Division of Management of Authority we have learned that CAFRA had the opposite of its intended effect for wildlife importers. The USF&WS was beside itself with the changes, deadlines imposed upon it, elimination of the cost bond and other protections and was not sure what it all meant or of the Agency's ability to change practices to comply. They soon focused on the “contraband or illegal to possess” exception and circulated memos that they would pass their own regulations treating violating wildlife items as contraband to place the Agency beyond CAFRA, at least in part. The International Affairs Program and Law Enforcement jointly proposed the regulations that were ultimately adopted in September 2007. Those regulations proposed treating all violating wildlife trophies as “contraband that was illegal to possess.” Conservation Force and many other organizations wrote vehement comments opposing that proposal. We pointed out that it would lead to forfeitures of trophies for government mistakes and even mere clerical errors. It did not dawn on anyone that those proposed provisions were purposefully inserted to end-round the intent of Congress through CAFRA. When the Bush Administration initially took office it put a hold on the proposed internal CITES regulations until 2006 when it was re-proposed with some revisions. Over the vehement objections of the leaders of the hunting community, the regulations were adopted in August 2007 to be effective in September 2007. It was misrepresented to be the adoption of the status quo, but was not.

Those regulations have caused the seizure crisis for three reasons. First, it created more regulations to be violated. Second, many of the new regulations were contrary to tradition and practices such as the change in the definition of “trophy.” Third, multiple times in the



JOHN J. JACKSON, III
Conservation Force



“SERVING THE HUNTER WHO TRAVELS”

World Conservation Force Bulletin

Editor/Writer

John J. Jackson, III

Publisher

Barbara Crown

Copyright 2008© by Dagga Boy Enterprises Inc. ISSN 1052-4746. This bulletin on hunting-related conservation matters is published periodically free of charge for subscribers to *The Hunting Report*, 12182 SW 128 Street, Miami, FL 33186. All material contained herein is provided by famed wildlife and hunting attorney John J. Jackson, III with whom *The Hunting Report* has formed a strategic alliance. The purpose of the alliance is to educate the hunting community as well as proadvocacy of hunting rights opportunities. More broadly, the alliance will also seek to open up new hunting opportunities worldwide and ward off attacks on currently available opportunities. For more information on Conservation Force and/or the services available through Jackson's alliance with *The Hunting Report*, write:

Conservation Force
3240 S I-10 W Serv Road
Metairie, LA 70001

Tel. 504-837-1233. Fax 504-837-1145.
www.ConservationForce.org

For reprints of this bulletin or permission to reproduce it and to inquire about other publishing-related matters, write:

The Hunting Report
12182 SW 128 Street
Miami, FL 33186.

Tel. 305-670-1361. Fax 305-670-1376.

Federal Register Notice it was represented that any irregularity of any type or kind was a violation of CITES and hence the ESA that implements CITES; therefore, the trophy was contraband illegal to possess so the hunter had no constitutionally protected property interest or rights. That was the goal in response to CAFRA that Law Enforcement had long been awaiting. Since then, there have even been Law Enforcement Summits spreading the new enforcement policy that is opposite past practices.

The result is CAFRA protects criminals and tax evaders but not conservation hunters. The crisis is very real, and the result of a well-intended act of Congress that should have had the opposite effect.

Conservation Force is in Federal District Courts and Federal Appellate Courts across the land fighting for hunters' lost property rights and finding little sympathy. Believe me, it is not fun. The real remedy lies with Congress to effect its original intent through additional remedial legislation.

Trophies have always been “subject to seizure” for ESA violations, but that authority was only rarely invoked. Now the norm is seizure and forfeiture regardless of fault or harmlessness of the violation. Either CAFRA or the ESA forfeiture section needs to be amended.

Amendment of the Trophy Problem Checklist: From the ongoing trophy detentions, seizures and forfeitures, and the Federal Court proceedings and sworn official affidavits of USF&WS authorities across the nation over the past year, our knowledge of the enforcement of the September 2007 regulations and interpretation is maturing. Conservation Force, with the help of import and export brokers around the world, has revised the checklist guidance to avoid seizure. That checklist is the last page of this issue of *Conservation Force Bulletin*. It will also replace the old checklist on Conservation Force's website at <http://www.conservationforce.org/news.html>.

The revisions are highlighted. Note that the foreign authorities need to confer with USF&WS Law Enforce-

ment Headquarters in D.C., not the port inspector. All communications with a foreign government must go through Headquarters. That contact person is Sheila Einsweiler, Senior Wildlife Inspector, US Fish & Wildlife Service, Office of Law Enforcement, 4501 N. Fairfax Drive, Arlington, VA 22203. Tel. 703-358-1949, Fax 703-358-2271,



E-mail: Sheila_Einsweiler@fws.gov. Note that worked elephant ivory can't be imported at all and that paint or skin pasted on the ivory base is treated as worked.

DATELINE:US

**News... News... News...
Anticlimactic Polar
Bear Court Hearing**

On Wednesday morning, October 20, 2010, 35 attorneys gathered in Courtroom 20, the largest courtroom in the Federal District of Columbia. More than 15 of us had been selected to argue components of the polar bear listing case for four hours each with their respective part from eight to 20 minutes in length.

Instead, the Court redirected the course of the case and deferred oral arguments. The Court remanded the cases to the USF&WS to explain its use of the term endangered species as one “imminently” at risk of extinction. The USF&WS had defined “endangered” to be a species in imminent risk of extinction upon the incorrect representation that Congress provided that definition, but the Judge pointed out that the term “imminent” is not in the statute. The Court was perplexed that the

USF&WS had made this unchallenged statement without any process. An agency is allowed to prove its interpretation of a statute that it is charged with implementing, but in this instance that had not occurred because the USF&WS had represented it to be in the statute when it was not. If the definition of “endangered” was in question so was that of “threatened” because a threatened species is one likely to become “endangered” in the foreseeable future.

It was such a significant issue to the Court that it remanded the listing rule to the USF&WS to explain and justify its interpretive word choice.

The cross briefing of the new issue has been ordered and the consolidated cases are expected to get back on track by late January. Some view this as a scary indicator that the Judge is sympathetic to the argument of the Center for Biological Diversity that the polar bear should have been listed as endangered because it will eventually be at or near extinction in 200 years, even if not “imminent.” In fact, the Court has given the Government a chance to save itself. There is a difference between threatened and endangered, and that difference may be the first of many issues resolved in this important litigation. Believe me; we have many other issues to raise during this precedent-setting case. — *John J. Jackson, III.*

Conservation Force Sponsor

Grand Slam Club/Ovis generously pays all of the costs associated with the publishing of this bulletin. Founded in 1956, Grand Slam Club/Ovis is an organization of hunter/conservationists dedicated to improving wild sheep and goat populations worldwide by contributing to game and wildlife agencies or other non-profit wildlife conservation organizations. GSCO has agreed to sponsor *Conservation Force Bulletin* in order to help international hunters keep abreast of hunting-related wildlife news. For more information, please visit www.wildsheep.org.

GRAND SLAM CLUB OVIS

TROPHY PROBLEM CHECKLIST FOR U.S.

AMENDED OCTOBER 2010

- TAGS:** Must be 1) permanently attached 2) through a hole. Ear, eye, mouth, nose, bullet holes are okay, but not around the leg above the foot. Tag number must match that on the permit.
- PERMIT EXPIRATION:** Get a faxed copy of the import permit before exporting. Do not ship an Appendix I species without seeing a copy of the import permit to be sure it will not expire before the shipment arrives. Examine the export permit for expiration date and look for date errors.
- EXPORT PERMIT:** Examine for errors of name of permittee and name and number of species, signature and seal by CITES designated officers. The quota year and quota on the permit and tag are **the year taken, not the year of export.**
- VALIDATION:** Make sure section 14 of export permit is fully completed, i.e. all parts itemized, signed and sealed by designated CITES or Customs officer before the final step of shipment.
- PURPOSE CODE:** If crafted or worked item of trophy parts (feet, tail swish, bracelet, scrimshawed tusks (but only if not elephant ivory), boots, gun cases, clothing, etc.), export permit must be coded “P” for personal instead of “H” for hunting trophy. **Note: Worked elephant ivory can’t be imported at all due to the AECA but worked elephant bone can be if it is coded “P” and includes an Appendix I export and import permit, import form 3-200-37. “Worked” includes painted, etched, pasted with skins, etc.**
- VALUATION:** Understatement of value is the cause of excessive seizures, i.e. forfeiture of \$50,000 trophies for a \$500 offense. A true representative value should be used, not an understatement. Pro-rated cost of acquisition (cost of the hunt) is best, or insurance value. Note: trophies are not taxed upon entry into the U.S., but they most certainly are seized. The exporter should use the full value from the get-go as import brokers carry it over onto the declarations. **Import agents especially heed this with a problem shipment.**
- IN TRANSIT:** Transfer through intermediate countries must be immediate, without delay. A hunter traveling with his trophy cannot layover in an intermediate country without appropriate import and re-export permits from that country.
- POST-SHIPMENT CORRECTIONS:** Export authorities must immediately **contact and confer with U.S. Law Enforcement Headquarters** before issuing a retrospective permit or replacement permit, not months later or after issuing a new permit. Retrospective and replacement permits must be issued immediately, not weeks or months later. The importing agent must set corrective action in motion immediately and use a true value for the trophy on the 3-177 Declaration entry form rather than carry over as the value the export fee or some other incorrect value from the export documents.
- RE-SHIPMENT:** Send trophies back whenever you can, else it is treated as illegal to possess contraband like stolen goods or illegal drugs without any protectable interest at all.
- RE-SHIPMENT IMPORT PERMITS:** When trophies are returned to the exporting country and re-shipped, new, original import permits are required because the originals are marked cancelled.

Provided by Conservation Force
www.conservationforce.org
Tel. 504-837-1233

