



“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

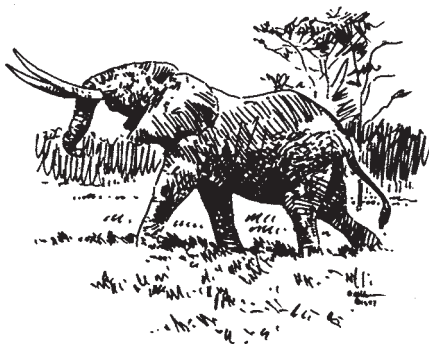
DATELINE: AFRICA

News... News... News Suit Filed Over Zambia Elephant Import Permits

In October, Conservation Force filed suit against the US Fish & Wildlife Service (USF&WS) to compel the processing of Zambia elephant trophy import permit applications. Applications to import elephant trophies dating back to 2005 have not been processed at all. A Freedom of Information Act Request disclosed that the Division of Scientific Authority had not even taken the first step of making a non-detriment determination – positive or negative – nothing at all. The USF&WS also failed to respond or act when sent the required 60-day notice of intent to sue.

What has been particularly troubling is International Affairs' repeated representations to Zambian authorities that they were close to approval of elephant trophy imports. Recently, International Affairs has started asking for information that the Zambian au-

thorities had already furnished in their initial request for approval. The Service has in effect started asking for what it has had from the beginning. This has exasperated the Zambian authorities, who have responded by filing a proposal to downlist its elephant at the next CITES CoP in March 2010 to



avoid such arbitrary and capricious treatment. If the elephant is downlisted to CITES Appendix II, at least for the limited purpose of trophy trade, no import permit will be necessary. That is already the case in Namibia, RSA, Zimbabwe and Botswana.

Zambia has only had a quota of 20 elephant per year since it opened elephant hunting. The hunting has been

limited to communal areas to reduce conflict between the local people and the growing number of elephant. Those local people get one-half of the revenue. That should meet the enhancement requirement of the USF&WS, so in effect the elephant has been denied enhancement while the permit applications go unprocessed.

Zambia has more than 20,000 elephant and the population has been growing, now approaching 30,000 according to a recent survey. The quota of 20 per annum has been less than one-one thousandth of the population, but the Division of Scientific Authority and Division of Management Authority of International Affairs have neglected to make either a non-detriment determination or an enhancement finding. They have just run Zambia around in circles for five years. To International Affairs, the applications are a low priority, and they have to make self-imposed findings before approval, contrary to very express recommendations of CITES Resolutions and Decisions. The USF&WS will no longer accept the quotas or biological non-detriment finding of exporting scien-

tific authorities.

International Affairs’ own regulations require it to process applications “as soon as possible,” and its written acknowledgment to applicants specifies a processing time of 30 to 90 days. The suit is based upon that regulation, the Administrative Procedures Act that provides a right of action for “unlawfully withholding” or “unreasonably delaying” proper procedure, the procedural “due process” clause of the Constitution and the bundle of obligations to encourage and cooperate with foreign nations and not to jeopardize listed species under the ESA and CITES. Important legal precedent could be set in this case. Regardless, the Court should certainly issue a mandamus compelling the processing



of the permits.

A copy of the suit is in the *News and Alerts* section of Conservation Force’s website at <http://www.conservationforce.org>.

International Affairs may deny the permits, in which case the suit can be amended to challenge the denials. Recently, International Affairs denied the permits for Niassa Reserve in Mozambique, a model program, when we compelled them through suit to act on the permits after five years. The reasons for those denials sadly reflect more on International Affairs than the merits of the permit applications and the exemplary Niassa Reserve program. In that instance the suit will simply be amended to challenge the arbitrary, capricious and irrational denials. Granted or denied, no import permit will be necessary if the elephant are downlisted to Appendix II next March.

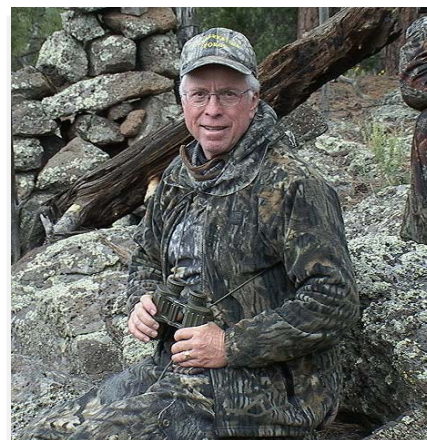
Only when the permits are processed can we define what the issues are, since International Affairs waffles, is so indecisive, and is such a poor partner. When the ultimate denials are irrational it is time for Court review.

DATELINE: ARCTIC

News Analysis
USF&WS Proposes
CITES Uplist Polar Bear

The listing proposals for CoP15 of CITES, to be held on March 13-25 in Doha, Qatar, were not posted as of this writing, but the USF&WS had issued a press release and a copy of its 19-page proposal to transfer all polar bear from Appendix II to Appendix I based upon an “inferred or projected” “marked decline” in the population size due to a “decrease in area” and “quality of habitat.” The proposal is not based upon the here-and-now status nor any quantified or quantifiable loss of habitat or population.

If adopted, the proposal would become effective 30 days after March 25, the concluding day of that Conference of the Parties (CoP), regardless of when a hunter may have taken a bear. It would be a total ban on commercial trade and would require the issuance of import permits for hunting trophies, which no doubt many countries may then be reticent to approve. Since the USF&WS already banned hunting trophies under a provision of the Marine Mammal Protection Act (MMPA) that was triggered by the ESA threatened listing, the Appendix I listing will only affect foreign trade and the exempt trade of Alaskan natives, which is commercial trade. Indeed, the USF&WS may have found a way to stop the trade of native polar bear artifacts in Alaska, though it is not mentioned in the proposal at all. If the bill currently in Congress that would re-authorize import of those trophies trapped from the threatened listing, or if the bill to reopen imports passes, US hunters will additionally need CITES import permits from the International Division of the USF&WS for import.



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World Conservation Force Bulletin

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Publisher

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“Serving The Hunter Who Travels”

Under CITES, the USF&WS was required to consult other range nations, i.e. countries in which polar bears range. According to the US, when consulted, “Canadian officials indicated: International trade is itself not a threat to the species population. Any polar bear from Canada found in legal international trade will have been legally harvested in Canada. A sustainable and well-managed hunt is an important part of a conservation plan. An outright ban on trade will have no impact on quotas, but it might have a negative impact on conservation.”

Norway is also one of the range countries and replied, “[a]t present, we are inclined to think it is premature to uplist the polar bear.” Supposedly, Denmark (Greenland) and the Russian Federation have not yet made a specific response to the proposal itself. We most certainly agree that it is premature and will harm the bear more than help.

Normally, wildlife managers reduce animals when they exceed habitat capacity. This proposal is unprecedented, making USF&WS the leader in advocating precautionary elimination of sustainable use by listing species decades in advance of possible and unquantifiable impacts of the global warming trend. There is most definitely an agenda here far beyond the best interest of the polar bear. It characterizes all use as an added stress that is undesirable – even ecotourism. It argues that use should be eliminated today instead of populations being reduced purposefully to be within reduced habitat capacity. Perhaps it is time for political intervention within the United States.

We have been tracking the development of this proposal but still find it hard to believe. Initially, WWF and TRAFFIC North America recommended the United States propose the transfer of the polar bear from Appendix II to Appendix I due to climate change. Those interrelated organizations made the same suggestion for walrus and narwhal, but the outcome of those suggestions is not yet available. WWF is attempting to turn the polar bear into the North American panda, or the elephant of the Arctic, like its panda bear logo.

The corporate motive of WWF is evident, but that of the USF&WS is not. In its July notice, 74 FR 33460, 33462, the USF&WS first announced that it was “likely to submit” the polar bear for consideration for transfer to Appendix I. Moreover, it published an extended version of its preliminary position at <http://www.fws.gov/international/newspubs/fedregnot.html>. It had clearly made up its mind before the publication.

There are a number of interesting points to note about the proposal. It describes the projected decline as a “marked decline” without any quantification. Most species in the world have declined. It states that the bear’s range is limited by the extent of southern sea ice but neglects to mention the improving habitat to the north of its



present range. It states that sea ice thickness in the Arctic region is also declining, as if that is bad, when that makes it more favorable habitat. It states the bear to be between 20,000 and 25,000 polar bear in 19 putative populations and that a 20th population may occur in the central polar basin, but concludes that the “number of polar bear, based on research, is decreasing throughout their range.” To do that they wholly ignore the increase in Davis Strait and other areas that far exceed the declines. In fact, even the allegedly declined bear in Western Hudson Bay are now increasing because of reduction in harvest. Also, a number of tagged and tattooed bears unaccounted for in the last survey have been found nearby. The range-wide increase far outstrips the decline of less than 300 bear in Western Hudson Bay over the past 19 years. Other popula-

tions that had been overharvested, generally due to mistaken population estimates, are all increasing and are expected to continue to increase, while habitat may decrease. There is yet to be as much as a one percent reduction in the overall population numbers. The bear is one of the few in the world to still have its full range, and if it loses habitat in that range as projected, it will still have more of its original habitat and population than most other species in the world that are not so isolated and are not listed.

The proposal expresses concern for other threats that ice melt may “likely exacerbate,” including “increasing levels of ecotourism.” Nothing is sacred.

The Service states that the transfer to Appendix I “would essentially prohibit commercial trade in polar bears, including parts and products.” Between 1992 and 2006 “skins accounted for the majority (52% - 3,237 skins) commercially exported or an average of 216 skins annually, 87% from Canada and 13% from Greenland. Trade records are not clear in that ‘skins’ are sometimes treated as trophies and sometimes as ‘bodies.’ Of the skins in trade, only 14% (807) were exported/re-exported as hunting trophies and of the bodies in trade, 72% (277) were trophies.”

The Service notes that the EU, acting through its Scientific Review Group, has only made a negative finding for import of bear from Baffin Bay and Kane Basin and has a positive opinion for all other Canadian sub-populations. Of course, this proposal is intended to change that. There is no mercy for the livelihood of the people of the Arctic North.

USF&WS issued a press release that explained “[l]imiting commercial trade in this species (polar bear) will address a source of non-climate stress to polar bear populations and contribute to long-term recovery.” There is no representation that the transfer will reduce the global warming threat only that it will reduce other stresses. The proposal can be found on Conservation Force’s web site under News and Alerts at <http://www.conservationforce.org/news.html>.

Briefly Noted

Polar Bear Lawsuits Challenging the Listing Decision: The first round of motions for summary judgment and briefs in the multi-district polar bear suits were filed on October 20th. A 45-page *joint* brief was filed challenging the listing by Alaska, SCI and SCIF, Conservation Force, et al, the California Cattlemen’s Association and Congress of Racial Equality. The court had ordered a joint brief but also permitted the parties each to file a supplemental brief. Both the joint brief and Conservation Force et al.’s supplemental brief are on our web site under *News and Alerts* at <http://www.conservationforce.org/news.html>.

It was also the deadline for the joint brief of the Center for Biological Diversity, Greenpeace, Inc. and Natural Resources Defense Council. They argued that some subpopulations of the bear should be listed as “endangered” instead of just threatened and asked that the rule be remanded and the Service ordered to re-determine the listing within 120 days and that the listing remain in “full force and effect during the remand.” Of note, these plaintiffs make a vehement argument that “hunting is a severe threat to numerous populations of polar bears, including several of the ones most impacted by global warming.” They devote a section to that allegation. Conservation Force has taken the opposite position that all or most populations should not be listed at all and is arguing for import of those trophies already taken until the listing is re-decided.

Wood Bison Downlisting and Permits: Negotiations in the wood bison lawsuit have broken down. The Service would not agree to complete the 12-month and final (24-month) downlisting determinations in a timely manner, so, in early October, Conservation Force filed a motion for summary judgment to move the case to conclusion. The Service wanted to take nearly three years to make the 12-month determination and four years in total to make the final 24-month determination. The

deadlines are mandatory under the law. The motion for summary judgment can be found on Conservation Force’s web site at <http://www.conservationforce.org/news.html>.

In the meantime, the Service (International Affairs, of course) denied all wood bison import permit applications that have been pending as far back as 2000.



Though the Service has published that the Canadian wood bison is an example of a species that should be imported under the “enhancement” section of the ESA, it gave four reasons for the denials.

The first reason was the removal (hunting) “could have reduced the number of stock available for reintro-

duction efforts throughout its range.” That is not true in fact, but we suppose anything “could be” true.

Second, “it is not clear what impact the anticipated increase in takes would have on the bison population” since “one probable direct effect of issuing the permits would be to increase the lethal take...by US hunters.” No one has ever suggested the total quota would be higher or unsustainable in the particular herd that is undisputed to be above capacity.

Third, “the issuance of denial of these import permits would not have a direct financial effect on Canada’s management programs for the species [because all] revenue...are deposited in a central account....” In other words, Canada does not have a PR Act requiring dedication of license fees. In the case of these particular permits, the price paid for the hunts went directly to bison-related research for the particular population and that was far greater than the mere license fee sum.

Fourth, the Service said it had “no information demonstrating that the population pressures...cannot be otherwise relieved through other means besides lethal take...[even though] the Service’s files indicate that the population from which your trophy was taken may have exceeded the carrying capacity for the area....” The bison are so prolific no other alternative exists.

Fifth, the Service said that “it is possible that the loss of available stock could adversely influence...[r]eintroduction efforts in other parts of the wood bison’s range [that] were ongoing at the time....” This seems to be a repeat of the first reason. It is a very unkind assumption about the Wood Bison Recovery Team, Yukon and Canadian management authorities.

The Service acknowledges its duty to examine the negative consequences of not issuing an import permit, i.e. the jeopardy to the species due to its inaction, but the denials do not disclose that analysis or determination. - *John J. Jackson, III.*

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