



“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

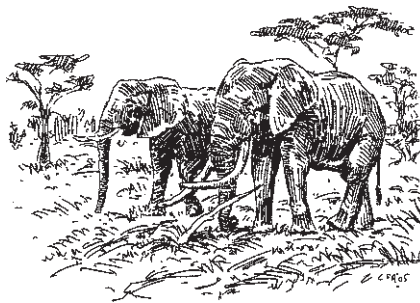
CITES: Trophy Importation Crisis Averted For Now

In late May we began receiving calls and e-mails from San Francisco to New York about dozens of trophy shipments being held. The owners were being given the option of seizure or shipping their trophies back to the country of origin. Section 14 of the export permits was not satisfactorily completed. The trophies were from Tanzania, Zambia, Botswana, Namibia, Zimbabwe, Spain, CAR, Cameroon and Tajikistan. Hunters, brokers and trophy import agents were asking for advice on what option to take, i.e. bearing the costs and risk of reshipping or accepting seizure and petitioning for release.

If shipped back, there was a risk of loss or damage to the trophies. There was also a risk that the export and/or import permits would expire during the process. In addition to the cost of agents on both ends, there are storage charges at both ends and insurance.

If the hunter chose seizure, then the hunter could simply forfeit his CITES-listed trophies to avoid further costs. In that case, there was no assurance initially that a civil fine might not still

be imposed atop of the forfeiture. Alternatively, hunters who choose seizure could file a *petition for remission* of the seized trophy or trophies on the basis that it was the fault of the exporting CITES government authority and he or she was an innocent owner. There



are drawbacks to that choice. First, there is a low success rate with petitions for remission and a dearth of specialized legal counsel to competently handle such cases. The regional solicitors who decide the petitions for the respective ports seem to act as pros-

ecutors as well as judges. Historically, they treat such trophies as “contraband” to which the owner has no protected property rights and they treat trophy trade of CITES-listed species as disfavored. Since September 2007 (published August 23, 2007 and effective in September; 72 FR 48402), CITES government authority errors for Appendix II species are correctable after the fact, post-shipment, under certain limited and stringent conditions. Unfortunately, no such relief is yet available for Appendix I listed species such as most elephant and all leopard are classed. The petition for remission process can take years and if your trophy is returned to you, you are often required to sign a waiver of liability for its condition (sight unseen) before its return and have to agree to pay a civil fine in the amount of thousands of dollars. Violations are treated as strict liability. If you wish to seek judicial relief after exhausting the administrative petition for remission process, it is in federal court in the port of importation, which is expensive. Judicial

“Serving The Hunter Who Travels”

relief is rarely undertaken. Most petitions are denied and the trophies lost.

We advised all those who contacted us to choose reshipment and to be alert to import and export permit expiration dates. There was little real choice in the case of Appendix I seizures. If the permits expired during the reshipment cycle, it would be the hunter's fault under the interpretation of the regulations and there was little likelihood the trophy could be saved regardless of which CITES Appendix.

When the scale of the problem dawned on us at Conservation Force, we sent an urgent request to the Director and Deputy Director of US Fish & Wildlife Service for temporary relief. The response was immediate. Within days, every trophy in every port was released and cleared for entry. Because the underlying problem still exists and will arise again, I've included the full final correspondence with the Service. It is the closest thing to an explanation to the public, so we are publishing it here in full.

Our original email to Director Dale Hall & Deputy Director Ken Stansell:

We have a crisis! Dozens, if not hundreds, of shipments of trophies are being seized or turned around for re-export with attendant complications such as permit expirations.

Last August the Service adopted new internal CITES regulations. Those regulations treat export permits with imperfections as invalid. In the last month or so the Service has begun vigorously enforcing the requirement that export permits be endorsed properly.

Although the Service notified the CITES parties of its new regulations when they were adopted, the new regulations are over 100 pages in length and address a multiplicity of issues. It's a major undertaking to study and comply with them. It presents a problem in third-world countries.

This is a request that the seizures and re-exports be temporarily halted until a specific advisory can be issued to the exporting nations. After all these years, it cannot hurt to delay the implementation for a couple of months. Right now, it's having a devastating impact on the entire safari industry

and consequently, a negative impact on the conservation that arises from hunting-related programs - including those sanctioned by CITES through quotas and Resolution 2.11 (Revised).

Please respond as soon as possible.

Sincerely,

John J. Jackson, III

Chairman, Conservation Force

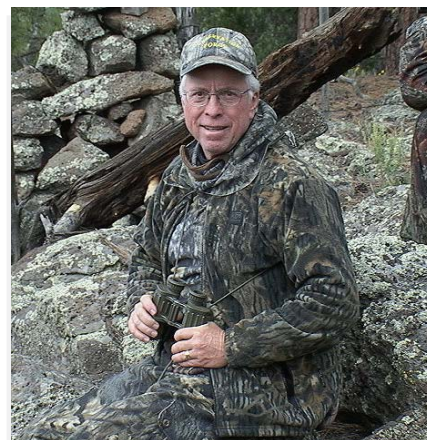
Here is the USF&WS response:

John,

I have checked into your allegations and I am not sure that I agree with either the nature or extent of your concerns. I believe you are referring to one specific requirement that CITES documents include the actual quantity of specimens exported or re-exported which must be validated or certified by the stamp or seal and signature of the inspecting authority at the time of export or re-export (50 CFR 23.23(c)(21)). This requirement, which the U.S. has been implementing for years, was reinforced at the Meeting of the Conference of the Parties last year with the recommendations in Resolution Conf. 12.3 (Rev. CoP14) on permits and certificates, under which validation of CITES documents is now required at the time of the export or re-export, even when a physical inspection is not possible. Annex 1 of the resolution, which contains information that should be included in CITES permits and certificates, contains (in paragraph p) the validation/certification requirement for all permits and certificates.

Following the announcement of our revised CITES regulations last September, we have not only distributed a general notice to all Parties, but have been working extensively bilaterally with a number of our key importing Parties, and in this case the safari hunting industry, to ensure that there is a common understanding of the requirements of CITES. We have also established a process to track countries that fail to validate CITES documents so we can continue to work with those countries to ensure compliance.

For the past eight months through May of this year, while working to get the word out, we have NOT taken any enforcement action on shipments con-



JOHN J. JACKSON, III
Conservation Force



“SERVING THE HUNTER WHO TRAVELS”

World Conservation Force Bulletin

Editor/Writer

John J. Jackson, III

Publisher

Don Causey

Copyright 2007© by Oxpecker Enterprises Inc. ISSN 1052-4746. This bulletin on hunting-related conservation matters is published periodically free of charge for subscribers to *The Hunting Report*, 9300 S. Dadeland Blvd., Suite 605, Miami, FL 33156-2721. 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
9300 S. Dadeland Blvd., Suite 605
Miami, FL 33156-2721.
Tel. 305-670-1361. Fax 305-670-1376.

“Serving The Hunter Who Travels”

taining CITES specimens where the only violation detected was the lack of validation on a CITES export or re-export permit or certificate. We advised importers of the validation requirement and warned that future shipments could be subject to enforcement action. Beginning in May of this year, we moved to a secondary phase-in period which will run through August. During this time, we will refuse clearance for these shipments and allow the shipment to be returned to obtain the proper clearances, if the importer chooses. In cases where the importer does not choose to return the item, we may seize the shipment.

Recently, we have had a few situations where the permit was partially validated (signed) but the actual numbers of items imported was not identified. An incomplete validation (without numbers) is a violation. However, if this is a noncommercial shipment, there are no other concerns, and the actual quantities authorized by the management authority can be verified with a physical inspection, we are in the process of advising our officers to allow these shipments to be cleared for import.

We have done exactly what you suggested. Since the Parties recently voted to increase enforcement of this requirement, we allowed for a full 12 months grace period through September of this year before we will consider seizing shipments. After eight months of warnings, we have now moved to a refuse-entry posture which we will continue until that time. We believe that this phased approach is a reasonable and appropriate way to ensure compliance of CITES while recognizing the need to allow adequate time for the Parties to implement their decisions.

In closing, I hope this reply is responsive to your concerns. Thank you for communicating with the Service on these issues.

Kenneth B. Stansell
Deputy Director

U.S. Fish and Wildlife Service

The pertinent part of Resolution Conf. 12.3 (Rev. CoP14) on permits and certificates that Ken Stansell refers to above states:

Annex 1: Information that should be

included in CITES permits and certificates...

p) The actual quantity of specimens exported, certified by the stamp or seal and signature of the authority that carried out the inspection at the time of the exportation.

The new USF&WS internal regulations published August 23, 2007 (72 FR 48414) address the issue twice. First, section 23.27 provides the following: “What CITES documents do I present at the port?” ... “(c) *General validation or certification process.* Officials in each country inspect the shipment and validate or certify the CITES document....” Second, at 50 CFR 23.23(c)(21) the Service lists “[w]hat information is required on...foreign CITES documents.” The required information includes “valida-



tion or certification”. That is described to be “the actual quantity of specimens exported or re-exported: (i) Using the same units of measurement as those on the CITES document. (ii) Validated or certified by the stamp or seal and signature of the inspected authority at the time of export....”

When the Service approved its new regulations in August 2007 it specifically addressed our concerns here at Conservation Force. “Validation (Section 23.23(c)(21): We require quantity exported or re-exported whether the shipment is physically inspected upon export or not. One commenter expressed concern that this section requires a CITES permit to be validated prior to leaving the country; otherwise it is not considered a valid permit. The commenter stated that the majority of countries do not validate their export

permits and that this will become an enforcement burden to the wildlife inspectors program to either re-export the shipment for lack of validation or seize the item(s). The commenter questioned if there is a plan to notify all CITES Parties of the new requirement to lessen the burden. We are aware of the lack of implementation of this CITES requirement by some countries, and plan to focus outreach efforts on this issue before the rule enters into effect. However, we are also aware that receipt of a CITES document without validation is not necessarily due to an export or re-exporting country having chosen not to validate, but may be because these shipments have evaded export controls. The lack of validation is quite often a violation of the exporting or re-exporting country’s CITES laws and we are committed to ensuring that shipments of CITES species are legally traded.”

We cannot give the Service enough praise for its prudence in this instance. They warned the community, we warned the community and top import services such as Coppersmith, Inc. warned the community. Together, each in our own way, we tried to prevent the crisis. Working with Carol Rutkowski of Coppersmith, Inc., we even got one important trophy exporting country to add the inspection and validation blank to its CITES export permits form. Obviously, our best efforts failed and the USF&WS is giving hunters another chance to comply with CITES. The best assurance you can have is to see that only qualified exporting agents are selected by your hunting company or taxidermists. In short, we have to ensure that Section 14 of the export permit is completed. Hunters have to police this themselves before shipments take place and/or ensure that qualified agents are proofing the CITES export documents before the shipment takes place. In time, exporting CITES authorities will adopt the necessary protocol. Even then, there will invariably be mistakes. The more requirements, the more opportunities or risks of mistakes and errors. Remember that returns or reshipping will not be an option in the future.

Polar Bear Developments

Credit Where Credit Due: I must give credit to the fine attorneys who have been helping with the demanding polar bear litigation. Michael A. Oropallo and Ellen K. Eagen of Hiscock & Barclay, LLP of 300 South State Street, Syracuse, New York have been invaluable. Richard Joseph Finn of Burnham Brown, 1901 Harrison Street, 11th Floor, Oakland, California has been the primary California representative of Conservation Force. All services have been *pro bono*, i.e. without charge. These attorneys have to feed their families and pay for their staff and office overhead, while the litigation continues to be a demanding fast-track undertaking.

At this point in time, the single most immediate and most likely means of establishing the import of the approximately 60 trophies from hunts this Spring that cost approximately 1.75 million dollars is the intervention these attorneys joined together to file. As this bulletin goes to press, that intervention has been granted and the trial judge has agreed to reconsider the effective date of the polar bear listing for the limited purpose of permitting importation of all or part of the polar bear taken this past Spring before the May 15th listing date. The briefs are all in and those imports are awaiting the decision of the Oakland Judge that ordered that the listing be given immediate effect. The plaintiffs have no specific objection to the importation of the trophies. The defendants (Department of the Interior and USF&WS) object that it is too much trouble to issue the permits now, but agree that but for the Judge’s order they may have permitted all the trophies taken this season to be imported. Conservation Force had the last say in its reply brief and pointed out that the Service has no reason to complain of the extra work, for its conduct violated the discretionary listing deadlines, not the innocent hunters who themselves were compromised. The hunters were led to believe that trophy imports might continue and would not have even taken

their hunts had the bear been listed timely within the time delays.

Without the help of Michael, Ellen and Richard, no intervention would have been timely filed and the Judge in the best and only position to correct the error would not have had the opportunity. Without that intervention there would also be no right of appeal should the Oakland trial Judge err



again. The Service can do nothing beyond what the court ordered and that court can do no more than what the pleadings (intervention and motion for reconsideration) have put in issue.

More Polar Bear Bad News: Polar bear trophy imports are prohibited in the final listing rule. The rule states that “under the MMPA (Marine Mammal Protection Act) the polar bear will be

considered a ‘depleted’ species on the effective date of the listing...(and)...[a]s a depleted species, imports could only be authorized under the MMPA if the import enhanced the survival of the species...” 73 FR 28212 at 28236, Peer Review Comment No.3. This is misleading. Enhancement has never been found for a trophy.

The enhancement provision was added to the MMPA in 1988. The regulations adopted by the national Marine Fisheries Service/NOAA to implement it are very express. Section 216.41 entitled *Permits for scientific research and enhancement*, states “[o]nly living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit....” Legal counsel for the Marine Mammal Commission has advised us that lethal take and import of hunting trophies of lethally taken marine mammals are not considered enhancement. Unlike the ESA, the MMC takes a prohibitive view towards lethal take.

That said, Conservation Force has been undertaking an exhaustive review of the “enhancement” provision of the MMPA for the purpose of filing test import permits and/or a suit for declaratory judgment. We have tentatively selected the population of the Gulf of Boothia for the test import permit under enhancement. All those who have taken a bear in the Gulf of Boothia should contact us at jjw-no@att.net. There was a substantial increase in that population at the last survey – so many that some offtake might benefit that dense population. It is located in the belt of Arctic that is not expected to melt in the next 50 years.

Conservation Force had filed a petition to permit the importation of trophies from that area, and the draft publication for approval was in the signature chain when the petition to list was filed. That put a hold on approval. – *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