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## “SERVING THE HUNTER WHO TRAVELS”

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*“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

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□ Special Report

#### Trophy Seizures & Forfeiture Crisis: Problems and Resolutions

■ Two problems have now reached crisis levels at US ports of entry. US Fish & Wildlife Service (FWS) inspectors have generally stopped using their discretion when there is any appearance of a paperwork problem with a trophy. More and more frequently, inspectors are seizing shipments for any reason, no matter how minor, and without providing any opportunity to correct the perceived paperwork error. It is motivated by an attitude that trophies are unfavorable and undesirable trade. That incorrect attitude has been reinforced by the new FWS internal CITES regulations under which any and all errors, including innocent typos, invalidate permits. There is seldom any question about the authenticity of the permits or the legal take of the trophy, so the errors are of little or no biological or conservation harm. Enforcement has become stricter and blind.

The second level of the problem makes this far worse. The petition for

remission process has evolved into a sham. The petition for remission is the elective step the hunter can take to have the solicitor for the port where his shipment is seized review and mitigate the seizure. The solicitors reviewing the petitions are supposed to exer-



cise discretion and consider the materiality of the error and mitigating circumstances, but instead they are rubber stamping the seizures and inevitably ordering forfeiture. The solicitors are not administrative judges. They are agents of the Director of the FWS that

now take the position that any paperwork irregularity renders the trophy “illegal contraband,” making it impossible for them to release it. They are supposed to exercise fair discretion after considering the mitigating circumstances, but they too have adopted an attitude that hunting trophies are unfavored and undesirable trade deserving of zero tolerance.

Congress has provided express protection of property owners. Innocent owners are not supposed to lose their property, and penalties should be less than the total loss when it is disproportionate to the error. But solicitors are disregarding those protections because of their stated belief that the property is contraband and undesirable trade. There is no denying this growing threat to hunting and the conservation programs of foreign nations because it is being repeated across the country in written solicitors’ opinions and subsequent forfeitures of trophies. There is a growing written record of

solicitors’ outright refusals to apply the innocent owner defense or to apply the proportionality test and adjustment in lieu of absolute forfeiture.

In the Port of San Francisco, we have four compelling instances where the solicitor in a short span of time ruled that seized trophies can’t be remitted (released to the owner) because, as a matter of law (mistaken), the trophies are “contraband.” In each instance, the solicitor ordered full forfeiture and wrote that “Petitioner’s good faith or innocence is not material to the proposed forfeiture of the wildlife specimen...(because an) ‘innocent owner defense’ may not be asserted in instances where the property ...is ‘contraband or other property that is illegal to possess’.... Petitioner may not raise an innocent owner defense... Denial of an innocent owner defense in this matter is further supported by the very nature of the property to be forfeited.”

Those trophy owners had no chance to receive fair consideration of

their petitions for remission. Those trophy owners had no chance for return of their trophies from the get-go. Conservation Force sent notice to the Secretary of Interior and Director of USF&WS to no avail. To get meaningful hearings it has become necessary to file a complaint in federal court for declaratory and injunctive relief. In March, we filed the first suit in federal court in San Francisco for judicial relief. It is for two forfeitures that have already been ordered after failed petitions for remission and request for reconsideration. In two other seizures in San Francisco, we converted petitions for remission into claims, the alternative for relief from forfeiture which removes the claim to court and takes it away from the local solicitor. In those two cases the initial petitions for remission were denied, which left no doubt that the remission process was a complete sham. The petition can be viewed on Conservation Force’s web site at [www.conservationforce.org](http://www.conservationforce.org) under *News & Alerts*.

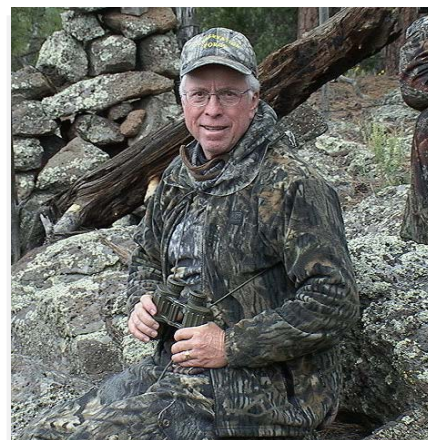
#### **In Memory of Harry Tennison – International Hunting & Conservation Icon**

■ This issue is dedicated to Harry Tennison. He died on March 4, 2009 at the age of 89. He was the founder of GAMECOIN, Game Conservation International, which he was president of for more than 25 years. GAMECOIN held its first Conference in 1967 and inspired the foundation of many other organizations. He was also the president and/or chairman of Shikar Safari Club International (1969 and 1970), Sportsmen’s Club of Fort Worth (1956 and 1991), Fort Worth Zoological Association, International Rhino Foundation, Operation Rhino, Operation Game Thief (founding first president in Texas) and Operation Orphan. He co-founded the African Wilderness Leadership School in Natal, RSA. He was a serious big game hunter and also authored *An African Affair*. He helped found the International Rhino Foundation and had the title of “Father of the Black Rhino.” In 1989, he imported 10 black rhino from Africa. Those rhino or their off-

spring (more than 50 as of 1998) survive today across the country from the Fort Worth Zoo to Orlando’s Disney World.

Harry was the recipient of too many awards to list here, from Ducks Unlimited Sportsman of the Year to induction into the Hunting Hall of Fame. Perhaps the ultimate honor was his selection for the Peter Hathaway Capstick Hunting Heritage Award that transcends them all. He was chosen to be the first individual to receive that award after a worldwide search for the first recipient in 2005.

Harry was a friend and advisor to yours truly. He and GAMECOIN both have financially supported Conservation Force from its inception. Harry was a consummate hunter, conservationist extraordinaire and inspirational leader. Our way of life and some part of the state of the natural world are part of his legacy. He is one of those who have left this world a better place.



**JOHN J. JACKSON, III**  
*Conservation Force*



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Briefly Noted

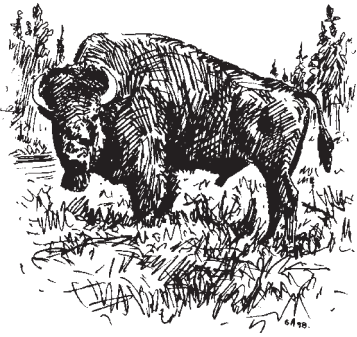
**Attorney Help Needed Now:** The above San Francisco suit against the FWS on the trophy seizure crisis had to be filed in the port of seizure. These “*in rem*” rules have proven to be a hardship on hunters, as the seizures are far from their homes and local counsel. That hardship is no doubt why the seizure and forfeiture practices have grown to be so unfair and one-sided. In the San Francisco case cited above, Stanford Atwood, a prominent local attorney, has agreed to serve as local counsel, and yours truly appears *pro hac vice*. A great debt of gratitude is owed to Atwood.

The injury caused by these seizures to the hunting community and range nation programs is already staggering. We need pro bono local counsel help in each regular port of entry until we are able to turn this around in court or in Congress. As I write this, help is needed in Atlanta, Los Angeles and Denver to file “claims” instead of petitions for remission until there is adequate judicial precedent applying the innocent owner defense and/or proportionality adjustments. The filing of a “claim” brings the matter before the local federal district court instead of the local solicitor. In that case, the impartial court applies the law and discretion instead of a USF&WS solicitor that does not believe remission is applicable to trophies. Attorneys that wish to help should contact me at [jjw-no@att.net](mailto:jjw-no@att.net) or at 504-837-1233.

**Recommendation on Filing Petition for Remission of Seized Trophies:** This is what Conservation Force advises until the underlying issues are resolved in court or Congress. If your trophy is seized by US Fish & Wildlife upon import and you choose to file a petition for remission to the solicitor, do it as soon as possible after you receive the official written “notice of seizure.” The reason is that you have only the same number of days to file a claim in court as to file for remission before the solicitor, but filing a petition suspends the clock on the time you

have to file a claim. If your petition is denied, you can still file a claim, but the claim removing it to court (just a short one-page form) has to be filed within the number of days you had left when your petition for remission was filed. The longer you wait to file the petition for remission, the less time you have to file a claim if and when the petition is denied. If the denial specifies your trophy is contraband or illegally imported, you are going to lose anyway unless you convert it to a “claim” for an impartial court.

**Wood Bison Litigation and Downlisting:** The wood bison of Canada are larger than the plains bison of the USA, but trophies of those bison have not been importable to the US because they are listed as “endan-



gered” under the Endangered Species Act (ESA). They were downlisted by the Parties of CITES from Appendix I to Appendix II to facilitate trophy export/import, but that did not change the ESA impasse. Neither did Canada’s downlisting of the bison under their own laws and regulations long ago. During the early years of the Bush Administration, the USF&WS published notice that it would begin permitting import of “endangered” species in select cases and specifically cited the wood bison as an example. Despite repeated requests by the Secretary of Interior and Director of USF&WS, the White House never approved the change in permitting practice. The permits filed by Conserva-

tion Force at the urging of FNAWS and others went unprocessed.

Furthermore, the Bison Recovery Team filed a petition to downlist the bison from endangered to threatened more than two years ago. Despite repeated requests, the USF&WS was too busy to attend to the downlisting petition though they expressed that it warranted downlisting.

In early December the Acting Director of USF&WS telephoned and suggested Conservation Force voluntarily dismiss all of the pending wood bison permits we had submitted on behalf of various hunters. In December, Conservation Force and a number of allied organizations sent a Notice of Intent to Sue and in March filed suit to both compel the downlisting determination within the non-discretionary expired deadlines and also to compel the processing of the outstanding trophy import permits. Suit was filed and is in federal court in the District of Columbia. A copy of the suit can be viewed on Conservation Force’s web site at [www.conservationforce.org](http://www.conservationforce.org) under *News & Alerts*.

The USF&WS did respond to the notice by making the required 90-day finding. It was a positive finding that the downlisting may be warranted. (74 FR 21, Page 5908, February 3, 2009) The comment period has passed, and we expect a positive 12-month finding shortly. We are also in court to enforce all the remaining deadlines. The comments are available on the [www.regulations.gov](http://www.regulations.gov) web site ([www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=FWS-R9-IA-2008-0123](http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=FWS-R9-IA-2008-0123)) and by far favor the downlisting. Conservation Force and its allied organizations filed a joint comment as well. We hope and expect with the help of the federal district court that the bison will be downlisted and importable by late December 2009, since that would be the mandatory 24-month period by which they must complete the process.

**Suleiman Markhor Suit:** Conservation

Force has long had a two-pronged effort to import “endangered” Suleiman markhor. One is a downlisting petition, and the second is test import permits. In December, the Acting Director of USF&WS asked yours truly to dismiss all outstanding import permits, including those applications filed for import of Suleiman markhor. That left no choice but to proceed in court to compel the downlisting and also to compel the processing of the import permits. Conservation Force sent a notice of intent to sue for the failure of the USF&WS to act for a decade on the downlisting petition for the listed Suleiman or straight-horned markhor.

Similar to the wood bison, CITES supports trophy hunting of this species, adopting a quota expressly to facilitate the beneficial hunting. But the White House would not approve the proposed import of the trophies under the “enhancement” section of the ESA, and the USF&WS let the downlisting petition languish. Conservation Force and a number of allied organizations jointly filed suit in March in federal court in the District of Columbia. This suit is available on Conservation Force’s web site at [www.conservationforce.org](http://www.conservationforce.org) under *News & Alerts*. It is a suit for failure to timely make a 90-day, 12-month or 24-month final determination on the downlisting. The USF&WS violated all three mandatory deadlines. It is also a suit for failure to process the trophy import permits that have been pending for years. The suit cites how the award-winning conservation program for Suleiman markhor has had to price its hunting trophies at less than one-third the price of the flare-horned (Kashmir) markhor that can be imported (\$45,000 versus \$150,000 respectively). That perfectly demonstrates that the ESA has had a negative impact in this instance.

Like the wood bison suit, this case should be a winner. The decade-long delay has caused the highly regarded recovery program for Suleiman the loss of millions of dollars. The program is the single most celebrated international success story in the world today, and a founding board member of Conservation Force, Dr. Bart O’Gara,

helped conceive and initiate it in the 1980s. Both the Clinton and Bush administrations promised relief, but neither delivered. We will wait no more.

This and the wood bison suit are unprecedented. The issues are monumental and will affect US hunting of all listed species under both CITES and the ESA. The suits and legal issues are a tremendous challenge, but the alternative unthinkable: losing without a fight.

#### **Polar Bear Enhancement Permits: In**



March, Conservation Force filed an administrative appeal for seven test import permits for polar bear under the enhancement section of the Marine Mammal Protection Act (MMPA), the sole remaining procedure to potentially import polar bear. The Request for Reconsideration was supported by three statements from Dr. Mitch Taylor, Dr. Milton Freeman and Dr. Lee

Foote that warrant reading if you wish to appreciate the enormous importance and role of hunting. These are definitive statements on how hunting by US hunters actually reduces the total offtake and the innumerable ways it enhances the maintenance of the polar bear population hunted. The request and statements can be viewed at [www.conservationforce.org](http://www.conservationforce.org) under *News & Alerts*.

These permit applications are unprecedented because the enhancement section of the MMPA has never been used for the purpose of trophy import before. They are pioneering permit applications in the truest sense. A decision is expected by June.

**The World Forum on the Future of Sport Shooting Activities:** Yours truly was voted on the Executive Committee of the World Forum on the Future of Sport Shooting Activities (WFSA) and made Chairman of its task force on the transportation of sporting firearms called the Transit Task Force. The WFSA is an important international organization representing the sport hunting and shooting industry before the UN.

So why are we taking on this additional responsibility? The problems of traveling with firearms are growing and must be addressed. We’ve recruited Barbara Crown, editor of *The Hunting Report*, to serve on the committee, and she has already prepared an important summary of the transportation and transit problems around the world. *The Hunting Report* is a service as well as a publication. Our plan is to put it to work for you in partnership with the very top leadership of the whole worldwide firearms industry.

The WFSA is also hosting a seminar entitled *The Ecological and Economic Benefits of Hunting* that is to be published to document the benefits of hunting while also identifying the growing firearms transportation and trophy permitting threats to those conservation and livelihood benefits. It should be a useful tool to educate the political leaders of developing countries that vote in the UN, as their perceptions are often different from the wildlife authorities of those same countries. – John J. Jackson, III.

#### **Conservation Force Sponsor**

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