



“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: How To Avoid CITES Trophy Import Seizures A Step-by-Step Guide On Who Is Responsible For What

The Responsibility of Export and Import Agents: Many of the errors that underlie the current seizure crisis are the fault of the expert subcontractors that hunters rely upon to export and import their trophies. The errors are commonly made by the exporting government, hunting operator, taxidermist or export agent. Regardless of who makes the error, the export and import brokers should confer, detect and correct mistakes before shipment.

Law Enforcement port inspectors of United States Fish & Wildlife Service (USF&WS), the Solicitors considering petitions for remission and the Court's hearing forfeiture claims all take the position that the hunter is ultimately responsible for the shipment being in order. The hunter chooses the country to hunt, the hunting operator, the taxidermist, export agent and import agent. In fact, this may be a fiction. Nevertheless, it is the position of the Agency and existing court jurisprudence. This is made worse by the

recent insistence by the USF&WS that any error converts the listed trophy into contraband and illegal to possess. The Agency is taking the position first that the hunter is responsible so he is not innocent and, second, the innocent



owner defense does not apply to contraband, which is, of course, illegal to possess.

Hunters have to rely upon export and import brokers to detect and correct the mistakes and also that those brokers not make their own mistakes.

Those brokers are best positioned to do that.

Conservation Force has been seeking leniency on the basis of the circulation of its Trophy Problem Checklist for US and general education campaign. The Checklist is part of our good faith effort to reduce the errors. The Agency wants more. The USF&WS wants hunters to hold those that make the mistakes responsible. Moreover, the number of mistakes and seizures appears to continue climbing. The growing awareness in the hunting and brokerage community is not yet enough. The 2007 US CITES regulations have now been phased in. We are attempting to gather the data and analyze the rate of seizures, but in the interval it is quite obvious that the number of seizures and forfeitures is still climbing. The seizure crisis or “war on hunters” is growing worse, so more self-help is necessary.

It is important to recognize who is responsible for the mistakes and who

should detect and correct the errors before it is too late.

Responsibility of The Hunting Operator: Your hunting operator is your facilitator in the exporting country. He has the knowledge, relationships and responsibility to document the legality of the hunt, the authenticity of the trophy, and to get your trophies to a select taxidermist and/or export broker. In some instances he tags the trophy. He selects and has the most direct relationship with the exporting country taxidermist and export broker. It is important that the operator participate and hold those he contacts and contracts accountable. He is your first line of protection.

Responsibility of The Taxidermist: In some instances the taxidermist in the country hunted is also the export broker, in which case he has the responsibility of both. Taxidermists certainly share most responsibility equally with the export broker.

The taxidermist must ensure that the skin and/or skull are properly tagged and identifiable, incoming and outgoing. He has the duty to secure and replace tags that are detached while in his custody. He must verify that the trophy is tagged. Today it may be advisable that he make a digital photograph of the tag and its precise location. Tags cannot be around feet or extremities. They must be 1.) permanently attached, with 2.) self-locking tags. This means they must be inserted through a hole. That hole can be an eye, ear, nose, mouth or bullet hole. It is almost never necessary to make a new hole, but if so, then it must be done. The taxidermist definitely has the responsibility to see and assure the tagging is in order.

Because taxidermy and trophy preparation is hands-on, that specialist is in the best position to make sure the tag and permit numbers match. In many instances the export permits are obtained by the taxidermist. In such cases he needs to peruse every detail of the export permit he has paid for on your behalf. That is the time and place the many clerical mistakes of the permit issuing authority can and should be detected and corrected.

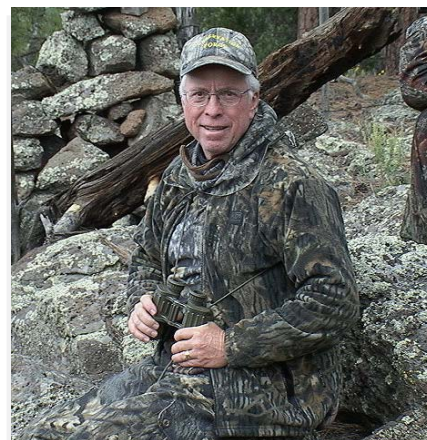
Responsibility of the Export Broker: The export broker (as well as taxidermist acting as an export broker) is in the single most important position. Today it is imperative that he use a checklist for the mistakes of all those that precede him in the process. He must check that the tag and permit numbers match. He must verify the expiration dates of both the import and export permits before the shipment. That means he has to have a copy of the import permit in hand. He must also examine the import permit for special conditions, such as restrictions on the quota year of the hunt to see if it matches the hunt period on the export permit.

The broker must not export the trophy until the export permit is validated. He must present the export permit to the CITES or Customs authority and have the validation inventory boxes completed, stamped and signed. The Convention mandates this and now it is being enforced. The export permit is not complete until this is done. The export broker must see that it is in fact validated.

The broker must also ensure the export permit is purpose coded “P” instead of “H” if it is a crafted or worked trophy, if it is destined for the United States. No ivory coded “P” can be imported into the United States. Don’t even try until the present court cases are resolved in New York and Atlanta as reported in this Bulletin.

Responsibility of the Import Broker: It is the import broker that must deal with US Law Enforcement port inspectors as well as others for clearance. They have to contend with the errors made by all others before that point in time. Believe me, they are your best friend. Yet they can make mistakes too. The 2007 CITES regulations of the USF&WS that plague the hunting community have landed in their lap. Different ports have interpreted the regulations differently. This has been compounded by the stricter enforcement measures and followed up by changes in the USF&WS’ Manual of Practices & Procedures.

Let’s digress for a moment to understand the crisis. First, in September



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“*Serving The Hunter Who Travels*”

2007 the USF&WS (International Affairs) implemented new CITES regulations in part to get regulatorily ahead of CoP Resolutions. That is more than we can discuss here except to point out that there are now more regulations to violate. Worse, some of those regulations are contrary to the practices and regulations of the rest of the world (Examples: an export permit for a single, non-commercial trophy has to be validated; a crafted trophy must be purpose coded “P” instead of “H” for trophy.) Those regulations were proposed in 2001. In 2000 Congress passed the Civil Assets Forfeiture Reform Act, CAFRA, so that no innocent owner would be deprived of his trophy through any forfeiture law of the United States. When it passed, USF&WS Law Enforcement leadership decided to exempt itself from CAFRA as much as it could by regulatorily treating trophy import violations as “contraband illegal to possess” that falls outside of CAFRA protection. Their 2007 CITES regulations are the device they chose (gleaned from Freedom Of Information Act responses). Those regulations state that any errors invalidate the permit, and the trophy is to be treated as contraband, illegal to possess, in which case there is no protected property interest. In the past this had normally not been applied to recreational trophy trade, particularly when it was an error of the issuing government officials. Now the trophy owner is responsible for the harmless clerical errors of the issuing government, even though that is the only “irregularity,” it is obviously a mistake and the issuing government admits its mistake and asks that the trophy not be seized.

Everyone has been on a learning curve and still is. Nevertheless, the “buck stops” at the import brokers when the trophy is detained and seized. If the import broker is able to see the import and export permits before the shipment, he may detect and be able to halt the shipment before it is too late. He is really duplicating the job of the export broker or taxidermist if he does that. That is what the exporting side should have done. The import bro-

ker also is in a poor position to double-check for validation, which is the last step before export. Recently an import broker checked over the export permit before a shipment and advised that it was in order but for the validation, and it was still shipped and then seized because foreign Customs did not validate the Appendix II shipment. The export broker presented the paperwork to Customs but did not examine it afterward. The trophy has been forfeited.

One mistake that is being made on the import side is the valuation entry on the wildlife declaration (3-177 form) the importer completes. We recommend that the hunter and his broker make an extra effort to reflect the true costs of the trophy on the declaration form if there appears to be any problem and/or if it is any listed species. In the absence of knowing the



hunt cost of the trophy (one form of market valuation customarily used by professional appraisers) the standard trophy insurance rate chart can be used. This is important because the US Constitution protects citizens from excessive seizures. The maximum fine under the ESA for these civil violations is \$500, so Conservation Force has been arguing in court that the seizure of a \$25,000 leopard trophy is excessive punishment. Because of the USF&WS’ argument that the trophy is contraband, the trial courts to date have not applied the excessive punishment clause, but we have two cases before the 9th Circuit Court of Appeals on this issue that have been fully briefed and only await oral argument. They should be resolved this year, 2011.

It is also the responsibility of the import broker to contact the export broker immediately if the problem be-

hind the trophy detention arose on the export side. In turn, the export broker must notify the permit issuing authorities and have them contact both the port inspector and Law Enforcement Headquarters. Although government-to-government contact is supposed to be at the US Law Enforcement Headquarters level, it alone has proven problematic. That correspondence should be to Headquarters but copied to the port inspector that has detained the trophy. The export country authorities need to be persuaded to copy the import broker with all correspondence. That is the work of the hunting operator, taxidermist and export brokers that must coordinate.

If a permit is lost when in transit, the export authorities can create a duplicate copy with an original signature. It will be accepted if the precise regulatory steps in the US Code of Federal Regulations are followed to the letter. A replacement permit can also be issued, again, only if the US regulatory steps are followed to the letter. The import broker cannot wait until errors are corrected before declaring the wildlife for clearance.

We have succeeded in obtaining the release of some trophies, but the window for remissions is closing. Moreover, the courts have not yet proven helpful because of the broad discretionary powers granted the USF&WS by Congress, the staunch position of USF&WS Law Enforcement that the trophies are contraband thus beyond the scope of normal legal safeguards, and the legal inferences and presumptions that wholly favor federal agencies when those agencies’ actions are under judicial review.

There is no question that hunters are taking “a hit” due to the discovery and learning curve and that seizure numbers are still growing worse. It is time for Congressional action. All that is necessary is an amendment to CAFRA which provides that CAFRA’S “innocent owner” defense applies to non-commercial trophy imports of ESA or CITES listed species that shall not be treated as contraband when permitting errors are clerical, harmless errors, or the underlying harvest was le-

gal. We need this to have fair treatment applied to what is now excessively punishing America’s civil, professional and business leaders who hunt internationally.

Until we get Congressional relief,

you must help yourself by policing your expert, independent contractors’ performance. Rest assured that Conservation Force cares and is doing everything it can for you and the sustainable-use-dependent conservation sys-

tems around the globe. We need help too. Please send tax-deductible contributions to Conservation Force, PO Box 278, Metairie, LA 70004-0278, USA; or online at <http://www.conservationforce.org/donate.html>. - *John J. Jackson, III.*

Billy Ray Parnell Purple Heart Program

■ Nine Purple Heart veterans took to deer blinds on a rainy weekend at Legends Ranch. As the trophy bucks arrived one by one, the veterans welcomed their fellow hunters with pats on the back and handshakes for a job well done. But, for the veterans, the hunt was secondary to the camaraderie.

“I’m not sure I deserve to be here,” said Vietnam Veteran Douglas Martin, of PA. “There are so many other deserving veterans, but it’s an honor to represent them.” Such is the story for many of the veterans at Legends.

Since 2003, Legends Ranch has sponsored the Billy Ray Parnell Memorial Hunt - taking deserving Purple Heart veterans on the hunt of a lifetime. Conservation Force is the fiduciary partner, i.e. it is the public charity that funds the program. Dedicated donations are welcome.

The hunt - which runs Thursday through Sunday - gives the veterans a chance to enjoy the sport of hunting at a ranch these vets refer to as a “dream come true.” This dream was made as a tribute to Billy Ray Parnell, a high school friend to one of the ranch owners, Skipper Bettis. The two joined the army under the buddy system. Bettis was rejected due to a football injury, but Parnell was accepted. After being sent to Vietnam, he was killed less than 30 days later. “This hunt is a tribute to him and to all brave men and women who serve our country,” said Bettis.

The weekend was full of stories, laughter and a few tears. “This is camaraderie right here,” said Randall Fletcher, a Vietnam Veteran from VA. “It’s self-healing to come here, to people who know what you’re feeling. It goes beyond my expectations.” Fletcher, was invited to attend the hunt, but felt there were more deserving veterans than himself. Fletcher, who is

battling cancer, wanted his neighbor, WWII Veteran, Clarence Robertson to attend in his place. “I don’t know how long I have to live, but I knew Clarence should be the one to hunt,” said Fletcher.

Legends had a surprise for Fletcher; traveling as Robertson’s companion, he too would be one of the lucky veterans chosen to hunt along with his friend. “I’m just enthused to be here,” said Robertson. “Randal gave up his hunt for me, and these good people gave us a chance to hunt together. I’m a veteran, but I’m a deer hunter this weekend,” said Robertson.

Jim McConnaughey, of TN, read



about the memorial hunt in a magazine and wanted to sponsor his father, James McConnaughey, a WWII Veteran from MI. “My Dad and I have been hunting for 49 years, but I have a really hard time getting him out in the woods in his wheelchair. When I saw in the magazine that [Legends] could help get him in the woods, I knew I had to try and get him here.”

Each year veterans are chosen from a pool of applicants. A group from Legends reads each application and has the difficult task of narrowing it down to nine hunters. “All of them more than deserve to be here,” said Colby Bettis, ranch director. When asked about the criteria, Bettis said, “We want to help those who think they can’t hunt any-

more due to physical limitations or other life challenges. We don’t want to turn anyone away,” he notes, “but we have to determine who we think would benefit the most from the hunt right now.” The other applications are saved and reconsidered each time.

Denny Mingus, a Vietnam Veteran of MI, was one of the hunters chosen to hunt last year, but due to illness was unable to attend. This year he was one of the lucky nine. Mingus knew about Legends from a TV show, but only dreamed of having the chance to hunt on its approximately five square miles.

“My wife Vicky and I sat outside the main gate almost 10 years ago. I told her I’d love to hunt there, but knew that I never would.” In a wheel chair, and not able to hunt like he once used to, this weekend made more than one dream come true for Mingus and his wife.

“We’ll never forget this,” said Kenneth Muston, a WWII veteran, of MI. His son heard about the hunt, went online and gave his dad’s story. “The last time my dad shot an antlered buck was in 1964,” said Muston, Jr. This hunt was a surprise to him, and it’s more than we ever expected.”

The surprise and genuine excitement was felt by all the veterans. “I’ve been in a lot of places, but I’ve never seen anything like this,” said Harry Grover, WWII Veteran, of MI.

As the veterans shared their stories, meals, and companionship over the weekend. It was like “going home to family,” said Grover. Family was mentioned a lot and the wonderful people who make this event possible.

It was a “celebration,” noted Robertson. Bob Fales, a Vietnam Veteran of MI, said, “Coming here this weekend is coming home to the parade we didn’t get over 40 years ago.” By: Sherry Gallo, Pembroke, VA.