



SPECIAL SUPPLEMENT

*"Hunting provides the principal incentive and revenue for conservation.
Hence it is a force for conservation."*

World Conservation Force Bulletin

conservationforce.org

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Success! Zambia Elephant Import Permits Issued By USFWS

The US Fish & Wildlife Service (USFWS) finally issued Zambia elephant import permits in late October. The Division of Scientific Authority made the necessary "non-detriment" finding in March, and the Division of Management Authority made its enhancement finding in late October after the hunting season was almost wrapped up. The USFWS said it would have issued permits for 2010 as well as for 2011, but no one submitted applications for last year. Any US hunter who took an elephant in 2010 can and should now submit an import permit application. Conservation Force assists hunters as a free public service with initial permitting, but we only submitted permits for 2011.

The issuance of permits came at the very end of the season, too late for the hunters who had applied. Although no applicants received permits before going on safari, a few hunters chanced it and took elephants in anticipation that permits would be granted after their hunts. Others did not because paying for an elephant hunt "on-the-come" without an import license is a proven substantial risk due to USFWS' change in practice. Those who took the risk were also counting on the likelihood that Zambia's elephant will be downlisted at the next CITES CoP; CoP16 in March of 2013.

I will not repeat the long, sordid history behind this approval. The agency promised these permits before the season started, but permits were not forthcoming. We had been working for weeks on a new suit, Zambia II, when the news reached us. Suit was to be filed the very week USFWS finally responded to our many requests and Freedom of

DATELINE:
Zambia
NEWS...NEWS...NEWS



John J. Jackson III

Information Act requests for an update as 2011 clicked past.

I m p o r t a n t l y , USFWS has approved only permits for 2010 and 2011. It pointedly said that it must make another non-detriment and enhancement finding before issuing permits for 2012 and beyond. Rest assured, we are working hard to identify and address all remaining issues. We also expect that Zambia's elephant will be downlisted in 2013 at the 16th Conference of the CITES Parties in

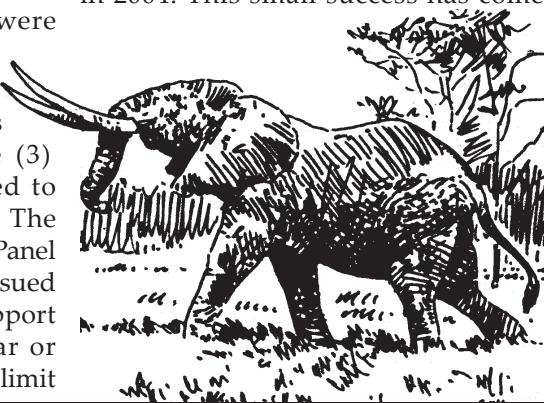
Thailand. It missed downlisting by only a few votes at CoP15. Even the US voted for the downlisting and made a floor speech in favor of the proposal. In that event, the trophies taken since hunting opened in 2005 will be importable. In the meantime, Conservation Force's first Zambia suit for import of elephant taken before 2010 will be on appeal. The appeal briefing will be complete and orally argued this Spring, 2012. There was more proof of the status and benefits after the last CITES CoP (proof Conservation Force helped contract the research to produce) but USFWS is not relating it back to elephants taken before 2010. Nothing was different about the non-detriment and enhancement of those earlier elephant except the finding of USFWS. The Zambia program was the same, and the populations were stable or increasing, as the surveys show.

The elephant hunting is restricted by Zambia to three (3) communal areas and is intended to reduce human-elephant conflict. The quota is limited to 20 elephant. The Panel of Experts at the last CITES CoP issued an opinion that Zambia could support a quota of 130 elephant per year or more, which Zambia was going to limit

itself to if its elephant were downlisted. The Division of Scientific Authority of USFWS placed a great deal of weight on that report in making its non-detriment determination. Up to that time, USFWS could not make the determination that a quota of 20 was sustainable.

There have been few – too few – new imports permitted into the US over the past two decades. Conservation Force was able to establish import of Cameroon elephant in 1995 and again in 1997 but not since. Import of Botswana elephant was accepted without fanfare, which was rather exceptional. USFWS insists upon remaking its findings on Tanzania imports annually, but for years has not been able to find the capacity or schedule to do it before the season was over. This year I flew into Washington, DC, with the Director of Wildlife Department, the Director of Research and the Director of the Mweka College of African Wildlife Management: the three highest management officials in Tanzania if not all of Africa. It was a substantial undertaking, but we finally got USFWS to issue Tanzania elephant trophy imports on time. (It can't be disputed that Tanzania has the second largest elephant population in the world.) *Conservation Force* also established the import of flare-horned markhor from Pakistan's community-based program a few years back.

Those are the only few new imports in 15 years, though we keep trying to have permitting used as a conservation tool. The effort in Zambia got serious in 2004. This small success has come



at enormous effort and costs. It is a US problem, but the US is by far the largest market for safari hunting, thus the greatest potential force for conservation. Solving this problem is important. Without the hunting, there is far less conservation, if any, outside of fully protected areas. And there is little hunting without the necessary trophy import permitting.

Thanks go out to those conservation soldiers who hunted elephant in Zambia from 2005 to 2009 in support of that country's program. Zambia's elephant hunting is not a goal in itself. It is a tool devised for the conservation of the elephant by experts and stakeholders. There is no substitute for the conservation value of the hunting that is in turn dependent upon import permitting. Conservation Force's goals are to put the force of hunting to work. It is a sensible, elementary course in theory. Unfortunately, there can no longer be

any pretense that USFWS "treats permit applicants as conservation partners." These imports were seven years in the making and were "forced." Believe me, originally, the Zambia imports were not part of the USFWS agenda, and they did not want it to be on their agenda either.

Because of regulatory impediments, bureaucracy and attitude, conservation permitting and conservation hunting might be a failure. It certainly has not proven to hold the promise once envisioned. Two decades of futility leads to conclusions such as that expressed on one occasion by a foreign Minister: "John, your government is lying to you." It is important that we don't also lie to ourselves. It is necessary to accept the truth in order to reckon with it: Everyone does not share our conservation dreams and hopes. That puts the future of the resources in more jeopardy than we originally imagined. ■



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Others also signed on but after the letter went out. In fact, we were deluged with signers that could not be added.

That was followed up with a letter to the new Chief of Law Enforcement, Chief Woody, asking for a meeting with representatives from the Congressional Sportsmen's Foundation, NRA, SCI and Conservation Force. Like the letter to the Director, this letter outlined the changes in the Chief's Directives, Service Manual (2008), and 2007 US CITES Regulations:

The new section does not have the "grace period" to correct clerical errors and provisions absolving the individual importer from penalty when the disagreement is with the issuing government. Those sections and Chief's Directive that provided leniency were deleted. Worse, the new Inspection section states that seizure is to be preferred, in effect eliminating the listed alternatives that have generally been more fitting options...

The inspectors are no longer using discretion. Instead, they are seizing trophies for every violation as a matter of course. Solicitors are no longer remitting seizures. Solicitors are treating every seized trophy as contraband that can't be remitted regardless of the innocence of the importer, the scale of the violation, or the fact that it is the issuing government's clerical error, neglect or disagreement with new US practices...

A trophy is seized nearly every second day. Some seizures have caused such panic that trophy trade has frozen or locked-up around the globe. At least

one seizure has been of a trophy that cost in excess of one-hundred thousand dollars.

We have not been able to get much relief from the courts around the country. The first case in California where we filed suit over three separate leopard seizures was denied by the District Court, the Appellate Court, and a request for a rehearing before the entire Ninth Circuit Appellate Court en banc was not granted. We have now applied for a writ before the US Supreme Court. That case has been narrowed down to two issues: (1) Were the trophy owners denied a fair hearing of their petitions for remission when the Solicitor had a fixed, pre-decided opinion that the trophies were not eligible for remission because contraband can't be returned and they were contraband regardless of the situation? (2) Does the Excessive Punishment clause of the US Constitution apply to the trophy forfeitures? Forfeiture of \$100,000 trophies for a \$500 violation does not fit.

In the first instance, the Assistant Solicitor in California who decides the petitions for remission repeatedly states that she can't remit the trophies because it is illegal to possess contraband regardless of the mitigating circumstances and any and every violation converts the trophy into contraband. She fortifies her denials with the statement that the "need to maintain the integrity of the CITES permitting system outweighs the equities presented." Any and all technical and clerical errors threaten the integrity of the system. She will not accept a monetary fine in lieu of forfeiture.

USFWS argues that the forfeitures are remedial, not "punishment," thus the Excessive Punishment clause of the Constitution does not apply at all. The California trial court agreed without citing or considering the Supreme Court case that states the clause applies if any part of the forfeiture is for "punishment" purposes. The Appellate Court avoided the issue and would not rehear it. We are arguing this issue in every case across the country because the seizures don't fit the minor violations. Unfortunately,

we have been handicapped because import brokers don't know the value of the trophies and enter all sorts of small sums in the value block on the 3-177 wildlife import declaration forms. By the time we learn of a seizure, that form has been incorrectly completed. We advise that at least the base price of the hunt (prorated) and the trophy fee be used, not the packing fee or government's export fee or some other figure out-of-the-blue.

There are too many of these cases, and broken hearts, to cover them all here, but some have been settled in court. One settlement was in Atlanta, when after two years of litigation the hunter was returned his scrimshawed elephant tusks, but only after he personally disc-sanded the etching of the "Big Five" off of the one side where it had been pencil etched. We advise anyone with an etched elephant trophy to do this before it is imported and seized, but make sure you don't sand off the identification with the etching.

In another case, after nearly three years in two courts, the court ordered the USFWS to mediate, and the hunter was then permitted to ship his lion back to Africa to ship it all over again at a cost of approximately \$3,000 and approximately one year of time. That was because USFWS absolutely refused to accept a corrected export permit that had already been issued because the issuing government had corrected its mistake without first consulting with and gathering concurrence from USFWS. That omission may seem rather unimportant when it was the government's own mistake, but USFWS would not even respond to multiple correspondences from the issuing government nor explain why it was not responding. It was not good foreign relations or the international cooperation that is the basis of CITES, and the Appellate Court said so in an angry retort to the government's counsel during oral argument.

We have now revised our checklist on how to avoid trophy importation problems (see page 4). This is the third version of this checklist. Hunters, operators, shipping agents and trophy clearing agents should all refer to it when shipping any CITES species into the US. ■

Checklist: HOW TO AVOID U.S. TROPHY TRADE PROBLEMS

AMENDED NOVEMBER 2011

- TAGS:** Must be 1) self-locking, 2) permanently attached, 3) through a hole. Ear, eye, mouth, nose, bullet holes are okay, but not around a leg above the foot. Tag number must match that on the permit. Both the tag and export permit must contain the total quota as well as that for the animal, e.g. 120/150.
- PERMIT EXPIRATION:** Exchange a copy of the import permit before exporting to verify it will not expire before arrival. Examine the export permit expiration date.
- EXPORT PERMIT:** Examine for errors of name of permittee and name and number of species. To be valid, the permit must be dated, signed and sealed twice, i.e. once at issuance and again at endorsement. The quota year and quota on the permit and tag are the year taken, not the year of export.
- VALIDATION / ENDORSEMENT:** Make sure section 14 of export permit is fully completed, i.e. all parts itemized, dated, signed and sealed by CITES or Customs officer, otherwise the permit is not complete.
- PURPOSE CODE:** Crafted or worked trophy parts (feet, tail swish, bracelet, scrimshawed tusks – but not elephant ivory – boots, gun cases, clothing, etc.) are importable if the export permit is coded "P" for personal instead of "H" for hunting trophy. "Worked" includes painted, etched, pasted with skins, etc.
Note: Worked elephant ivory can't be imported at all due to the AECA and downlisting annotation for elephant trophies on Appendix II, 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.
- 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 understated. Pro-rated cost of acquisition (cost of the hunt) is best, or insurance value. Note: trophies are not taxed upon entry into the US, 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 and enter the cost of acquisition for value on the 3-177 declaration form, particularly when 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 CITES import and re-export permits from that country.
- POST-SHIPMENT CORRECTIONS:** Export authorities must immediately contact and confer with US Law Enforcement Headquarters, not local inspectors, before issuing a retrospective permit, not months later or after issuing a new permit. Law Enforcement Headquarters' email is R9LE_WWW@fws.gov. The importing authorities must agree to issuance of a retrospective permit beforehand. The importing agent must set corrective action in motion immediately and use cost of acquisition as market value of 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. In the case of loss, replacement permits must state that they are replacements and why.
- RE-SHIPMENT:** Send trophies back whenever you can, else it is treated as "contraband that is illegal to possess" without any protectable interest, like stolen goods or illegal drugs.
- 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.
- GOVERNMENT ERRORS:** Most seizures arise from errors on the face of the export permit. Inspect and search for errors.

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