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"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: US

News... News... News **USF&WS Trophy Regs Still Wreaking Havoc**

Increasing numbers of CITES listed trophies continue to be seized upon import by the US Fish & Wildlife Service (USF&WS). Import or export permits with clerical errors, any error whatsoever, and those that have expired or are not original permits are treated as "invalid." Hence, the import is illegal, and the trophy is "illegal contraband." The same applies if the shipment arrives without a permit for whatever reason.

Hunting operators, taxidermists and government officials share the blame for these errors. It is imperative that they become experts at checking the face of the permits before shipment. For certain, USF&WS agents are unforgiving experts who *will* check it upon arrival in the US. By then, it is too late. Generally, mistakes are not forgiven. Believe me; hunters are losing elephant tusks, crocodile mounts

and all too many leopards. There was a rash of seizures of trophies from Tanzania and Zimbabwe last year when trophy exports backed up due to the conflict over the government's effort to raise trophy fees in Tanzania and the need for a new Zimbabwe export form to comply with new US regulations.



tions. Seems the delay, followed by the rush and the volume of backed up shipments led to more errors. We are able to get the return of some trophies through the administrative petition for remission process, but only in exceptional cases and wholly at the discretion of the regional Solicitor with the Department of the Interior. The results

are too inconsistent to be predictable.

Human error is not the only problem behind these shipment seizures. The new internal CITES regulations of the USF&WS's International Division (50 CFR Parts 10, 13, 17 and 23 published August 23, 2007 at 72 FR 48402) continue to create havoc, confusion and uncertainty. The latest wrinkle is over the wholly new regulation that trophies in transit must transit "immediately" through intermediate points or stops. We are told that "immediate" means "immediate." If the shipment is delayed or held over, regardless of the reason, it is not "immediate" transit. In that case, the trophy will be seized upon reaching the US unless a valid CITES re-export permit accompanies the trophy from the country that did not provide "immediate" transit of the shipment.

Of course, it can take a month to get a re-export permit, and there is the added cost of storage and permitting as well. In many instances, delays are outside of the control and even knowledge of those interested. We presume that Appendix I listed species will also require an import permit from the coun-

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try at the point of the layover during transit, but how do you get authorities in that country to do that permitting when the shipment never clears customs to technically enter the country and the delay is after the import?

As I write this, two elephant trophies from Botswana (Appendix II) have been seized because they remained in South Africa while being fumigated to meet US Department of Agriculture regulations for the wood shipping crate and then had to wait for the next available cargo flight. The USDA revised import regulation for wood packaging materials effective September 16, 2005 requires all boards to be fumigated with methyl bromide and also marked/stamped. This layover is the necessary practice, and the items never officially make entry through customs. That makes no difference under the new USF&WS regulation.

In essence, the USDA regulation has been causing trophy shipments to be delayed for fumigation of the wood crating in RSA and, even though those shipments don't officially enter the country of South Africa and clear customs, the new USF&WS regulation treats them as having done so. Hence, it is now requiring export permits from RSA as if the shipment had entered the country.

We can't guess how this will pan out and are greatly concerned that hunters will lose their trophies as the USF&WS interprets its new regulation on a case-by-case basis as seizures take place. Shame the USF&WS does not think things through before the fact.

In another case, a hunter's two Gobi argali trophies were seized when he personally laid over in a transit country. The trophies were left with the airline and never cleared customs for entry in the intermediate country, but that transit was not "immediate."

The USF&WS regulation states:

"We define an in-transit shipment as the trans-shipment of any wildlife or plant through an intermediary country, including storage in a duty-free, bonded, or other kind of warehouse or a free-trade zone, only for the time necessary to transfer the specimens to the mode of transport used to continue

to the final destination."

And:

"Section 23.22(c) Shipment Requirements: an in-transit shipment, including items in an onboard store, must meet the following: (1) when in an intermediary country, an in-transit shipment must stay only for the time needed to immediately transfer the specimen to the mode of transport used to continue to the final destination and remain under customs control. Other than during immediate transfer, the specimen may not be stored in a duty-free, bonded, or other kind of warehouse or a free-trade zone."

The related Article of CITES itself plainly states that import, export and re-export permit requirements "shall not apply to the transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs Control," Article VII. The new regulation of USF&WS changes the determination from "Customs Control" to one of time. Customs Control is no longer a saving factor if it is at Customs Control for a period of time longer than immediate.

The only advice we can give at this time is that it would be prudent to agree to reshipment, i.e. sending your trophy back before it clears US Customs, if the import inspector raises the issue. In the meantime, Conservation Force has filed a petition to revise this regulation and to suspend its effect. The suspension had not been granted at the time of writing this report. The petition to revise the regulation and to suspend it during the interim can be viewed on Conservation Force's web site under *News & Alerts* at <http://www.conervationforce.org/news/petitiontorevise.html>.

We succeeded in obtaining a suspension early this past summer to allow more time to phase in the verification and certification requirements by those inspecting export permits at the time of export. In this new instance I am not so sure the burden of the regulation can be justified. It is solving a problem that does not exist and can cause more problems and double the expense of trophies from some destinations.



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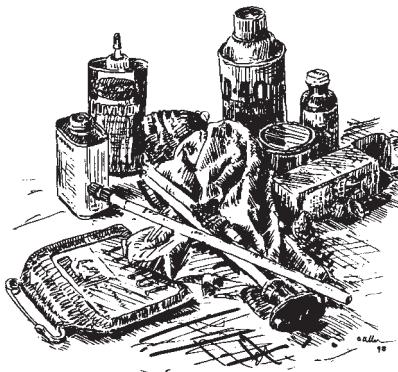
End-of-Year-Review
Leadership, People and Science

■ Conservation Force is first and foremost a wildlife conservation organization. I mean a real conservation organization, not a token or feigned one. We don't hold social meetings or conventions, publish magazines with hunting stories or maintain record books, but what we do is critically necessary for all those activities to continue. Even when I was leading SCI, my focus was the conservation and related governmental affairs activities, as were my wife Chrissie's activities in Sables.

Hunting and fishing are two of the most powerful tools to get people to care about wildlife conservation. Not just people like you and me, but also the local people who will ultimately determine the survival of the wildlife and wild places we care about. A recent study of the leading NGOs documented that Conservation Force was the most active hunter-supported organization in Africa from 2004 through 2006. Being a conservation leader is more than the smart and wide expenditure of funds. It requires participation with local people and governing authorities, as well as the respective scientific community. To do that we attend dozens of workshops, meetings, conferences and conventions, networking on your behalf to address short and long-term issues with a broad array of scientists and experts, and to chart the course for the future.

In the last few months, Shane Mahoney and I participated in the White House Conference to implement

President Bush's Executive Order to Facilitate Hunting Heritage and Conservation, the Association of Fish & Wildlife Agencies (AFWA) annual conference, the American Wildlife Conservation Partners (AWCP) meeting and phone conferences, and much more. We sent Dr. Hank Jenkins to the CITES workshop on making non-detriment determinations in Mexico. And Board Member Dr. Philippe Chardonnet, along with Mahoney and I, also attended the 4th World Congress of IUCN in Barcelona.



In November, Mahoney also represented Conservation Force at The Wildlife Society's annual meeting and at the annual meetings of the Professional Hunters Association of South Africa and Namibian Professional Hunters Association. We also serve or head committees and boards around the globe, from co-chairing the Antelope Specialist Group of the Species Survival Commission of IUCN to holding both the presidency and vice presi-

dency of the Sustainable Use Commission of the International Council of Game and Wildlife Management (CIC).

Wildlife and wild places today don't exist by accident. We are there to be a force for their survival. It is not simply a biological issue. The welfare of rural people is integral and inseparable, so we are deep into rural community natural resource-based wildlife management programs around the globe. Of course, we have a love for and relationship with the people as well as their wildlife and wild places. Our projects span from tribal areas in Pakistan to communal conservancies in Namibia. We serve on the *Rural Livelihoods Working Group* of the CITES Standing Committee and are proud to represent most of the Nunavut communities in the polar bear listing litigation. We are leaders in cutting-edge projects and programs. From design and conceptualization to proactive implementation, Conservation Force is leading the way with innumerable esteemed partners.

Believe me; what we do is important and serves your interests. It is that time of year to ask for your support. Contribute to a trusted organization where you know your donation will really count. Please make a tax-deductible contribution by mail to Conservation Force, PO Box 278, Metairie, LA 70004-0278; or by credit card at <http://www.conservationforce.org/donate.html>. You will receive a timely acknowledgment. Thanks for caring.

Briefly Noted

Insight Into New Trophy Definition: The US Department of the Interior's Office of the Solicitor has issued an opinion on the seizure of those handiworked white rhino parts I previously told you about. You'll remember this was the first seizure of white rhino parts converted into handicraft items before import (ice buckets, bowls

and swish). The seizure was the result of the USF&WS's reworked definition of a sport-hunted trophy, which excludes worked items. The Solicitor's opinion provides insight into this new USF&WS regulation. He writes:

"The Southern White Rhinoceros is listed at 50 CFR § 23.23 as a species protected by Appendix II of the Con-

vention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty that regulates trade in listed species, and the US is a signatory of the treaty as is the country of South Africa. Species listed pursuant to CITES are potentially threatened with extinction, which requires strict

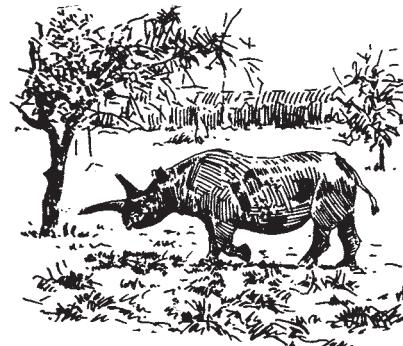
adherence to applicable CITES regulations. CITES is enforced in the US by the Endangered Species Act of 1973, 16 U.S.C. § 1538(c) and the regulations pertaining to CITES enforcement are contained in the Code of Federal Regulations at Title 50, Part 23.

"Pursuant to 50 CFR § 23.12(a)(2)(i) in order to import into the US any wildlife or plant listed in Appendix II from any foreign country, a valid foreign export permit issued by the country of origin, or a valid foreign re-export certificate issued by the country of re-export, must be obtained prior to such importation and presented upon demand to applicable United States customs agents at the time of entry into the United States. Persons violating these provisions may be assessed a civil penalty pursuant to 16 U.S.C. § 1540(a) of up to \$10,000 for each violation or pursuant to 16 U.S.C. § 1540(b) criminal sanctions of a fine of up to \$50,000 or imprisonment of up to one year, or both. Wildlife seized for CITES violations may also be subject to forfeiture proceedings under 16 U.S.C. § 1540(e)(4)(A).

"Generally, required permits and certificates for listed CITES species, as well as endangered or threatened species, intended for import into the US must be obtained prior to import. Generally, permits and certificates obtained after the date of import into the US are unacceptable.

"I am the senior attorney in the Office of the Solicitor, U.S. Department of the Interior, charged with the responsibility to adjudicate your Petition for Remission. As the deciding official, the first step in my analysis is to determine whether your import of the Southern White Rhinoceros parts violated United States law or regulations. Summarily, I conclude that your import of the Southern White Rhino parts did violate current United States law and regulations for the following reason. While the Southern White Rhinoceros is listed as an Appendix II species, that Appendix listing is reserved solely for the international trade in live animals and for sport-hunted trophies. At the time of import you possessed two South African CITES export per-

mits: one bearing an "H" in block 5a indicating it was for a sport-hunted Southern White Rhino consisting of the horns shield mount, skull, cape and backskin. The other CITES export permit bore a "P" in block 5a indicating it was personal items consisting of a Southern White Rhino tailswish, two feet ice buckets, and two feet bowls. The CITES permit with an "H" was sufficient to release to you the indicated sport-hunted Southern White Rhino



parts. However, the CITES permit with a "P" indicating the items were personal possessions changed the appendix listing of your Southern White Rhino import from Appendix II to Appendix I because all specimens of this species other than live or sport-hunted trophies are deemed to be Appendix I and the trade in them shall be regulated accordingly. As you point out in your petition, the current regulations

define "sport-hunted" to not include "articles made from a trophy, such as worked, manufactured, or handicraft items." 50 CFR § 23.74.

"Pursuant to 50 CFR § 23.12(2)(i) in order to import into the US any wildlife or plant listed in Appendix I from any foreign country, a US import permit and a valid foreign export permit issued by the country of origin, or a valid foreign re-export certificate issued by the country of re-export, must be obtained prior to importation and presented to US customs agents at the time of entry into the US. In this case you possessed the foreign (South Africa) CITES export permit but not a United States import permit. Wherefore, your import of the Southern White Rhinoceros parts was illegal as a violation of the current US regulations."

It remains to be seen if the import would have been allowed had the hunter made timely application for an Appendix I import permit. If you wish to try, we advise you to do so long before the item is handcrafted so that you can cancel the work if necessary.

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