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Re: End of Year Report 2020

Dear Supporter,

This end-of-the-year report is different. Instead of a bullet list of successes and pending issues, we highlight a few of the developments that warrant better understanding. You already know that our services are real. Also, you have had the benefit of three Quarterly Reports in 2020. Moreover, we do far more than can be adequately covered in a five page summary list of achievements. This end of the year format should be more interesting and informative. Read about the relevance of the incredibly important Alligator suits in California, the surprising benefits arising from the Pandemic and why and how trophy import permitting is broken. There is plenty of good news and Conservation Force is playing an important role, but this trial format is aimed at putting you in the know and will be less duplicative of the quarterly reports.

1. CRITICAL IMPORTANCE OF THE ALLIGATOR CASES IN CALIFORNIA:

One of the greatest threats to safari hunting and consequentially to dependent wildlife conservation and biodiversity integrity is irresponsible state legislation designed to prohibit trophy imports and possession. Conservation Force has had a largely successful role in defeating the explosion of that kind of state legislation since the Cecil media hype of 2015, but we have not been able to dissuade California that keeps proposing a ban. The California legislature brags about its long history of “animal rights” focused legislation but it is important to note that it has lost related litigation in the past that is now coming back to haunt the state legislature.

First, a little history is appropriate. Despite heroic opposition by all of the hunting community, in 2018 The Iconic African Species Protection Act passed both the California Senate and Assembly (House). Nevertheless, Conservation Force prevailed upon then Governor Brown to veto the legislation because it was “illegal” and would be “null and void” if signed. To my dismay the Governor pointed out at the time of his veto that he agreed with the merits of the legislation but his signature would consummate an illegal act.

This year, after skipping a Session, a similar bill, SB 1175, was introduced and again passed both the state's Senate and Assembly. The Bill timed-out by wee minutes when there was no time for final Senate confirmation of amendments. It is expected to be reintroduced in 2021. Although there have been promising educational inroads against the Bill that must continue, the legislators remain in large measure blinded by their ignorance, biases and animal rights ideology. All interests are gearing up for the renewed battle, but ultimately the future of the legislation in California and perhaps across the nation is being decided right now in two alligator trade ban suits that have been filed and consolidated in the United States District Court for The Eastern District of California.

That federal court issued a restraining order even before the January 1, 2020 effective date of Penal Code section 653o and 653r. Then on October 13, 2020 the Court issued a preliminary injunction prohibiting the enforcement of the two sections. Those Penal Code provisions would

make it a crime to trade or possess alligator parts even though alligators are listed on the ESA as threatened and on Appendix II of CITES that under special federal regulation can be traded because of the conservation and recovery benefits of that trade. The argument behind the legal challenge is that the ESA implements CITES and by FWS regulations Appendix II listed alligators can be traded. The state law conflicts with that successful federal conservation strategy contrary to the ESA's express preemption provision, Section 6(f) of the ESA, (16 U.S.C. 1535(f)). The alligator cases are APRIL IN PARIS, et al v. XAVIER BECERRA, et al, 2:19-cv-02471 before and LOUISIANA WILDLIFE AND FISHERIES COMMISSION, et al v. XAVIER BECERRA, et al., 2:19-cv-02488. Both are now before Judge Kimberly Mueller. The final scheduling order has been issued which provides for customary cross motions for summary judgment on whether there will be a Permanent Injunction against enforcement of the penal provisions and they will be declared null and void. The briefing is scheduled to be completed on or before April 30, 2021. A number of alligator interests have intervened as have animal rightists HSUS, HSI and the Center for Biological Diversity. Those three organizations unsuccessfully opposed the preliminary injunction that was issued against the legislation in October. They lost.

Most significantly, the U.S. Attorney General and U.S. Department of Justice have together filed a 20 page AMICUS CURIAE brief against the California alligator provisions on behalf of the United States. The introductory sentence of that authoritative brief is worth quoting:

This court should enjoin the State of California from enforcing state law that would prohibit certain commercial trade in threatened alligators and crocodiles, because federal regulations under the ESA specifically authorize these activities....

By prohibiting this commercial trade, California once again seeks to supersede the balanced federal regulatory approach that made the recovery of the American alligator possible.

The United States brief points out those prior cases have nullified and enjoined largely identical California alligator and other import and possession legislation that conflicted with the ESA:

As this Court previously declared in FOUKE Co. v. Brown, 463 F. Supp., 1142, 1145 (E.D. Cal. 1979), the California law is contrary to federal law, and thus unconstitutional and unenforceable as applied to the otherwise lawful trade in American alligator hides. Despite being under a federal injunction not to enforce the law, last year, California allowed its ban on alligator trade to go into effect once again. Because California law would prohibit activity that is specifically authorized under the ESA and its regulations, it is precluded to that extent by the ESA's express preemption provision....

After citing a number of prior cases striking down state laws that have conflicted with the ESA and its implementation of CITES, the brief further clarified the US Government's position:

This matter does not come to the Court on a blank slate. This Court has previously considered the California law's effect on the otherwise lawful trade in American alligator hides authorized pursuant to FWS regulations... and permits issued thereunder. It found the California law preempted and unenforceable.... the Court then enjoined California from enforcing the state law.... (Also) In a similar case involving elephant parts, the Ninth Circuit also concluded the California law was preempted. Man Hing, 702 F2d at 763.... The Court should follow these precedents and enjoin the California law again to the extent it prohibits federally authorized trade.

In addition to the U.S. filing the *Amicus Curia* brief, the FWS Office of Law Enforcement issued a CHIEF'S DIRECTIVE 11 days before the effective date of the new California Penal Code sections. The DIRECTIVE states that the state law will be "void" and the violation of the void state law will not serve "as a predicate offense for Lacey Act Charges."

We view both the filing of the *Amicus* brief and the issuance of the FWS Law Enforcement CHIEF's DIRECTIVE as a welcome development too long in coming. Conservation Force has been urging the leadership of the FWS and Department of Interior to step directly into the fight at an early stage of state legislative processes. We circulated a petition letter to the Secretary of Interior co-signed by the CSF, DSC, HSC, and WMI. Also, in Conservation Force's successful New Jersey suit against that state's Cecil type import ban a few years ago we served our ESA 60 Day Notice of Intent to Sue on the FWS and DOI as well as the Governor of New Jersey. That Notice is required by the ESA but we were able to wholly complete the case before any possible U.S. Government intervention (the permanent injunction was issued within 30 days of the Governor signing the illegal ban) so there was too little time for the U.S. Government to have intervened or file an **Amicus Brief** in that case. The irony is that California legislators make pointed claims in their Hearings and on the Floor that SB 1175 is necessary because FWS is approving trophy import permits, even elephant import permits which has not been true since Trump's blowup in 2017. Collecting evidence of illegal intent is one of the reasons we have participated in and monitored those hearings and legislator's web sites so closely.

One final note: Conservation Force was an inside advisor to the State of Louisiana Attorney General and other litigants from the inception of the California alligator suit after they were referred to me by the IUCN Crocodile Specialist Group of which I have been a member.

The *Amicus* brief and the U.S. Law Enforcement Chief's Directive can be found on Conservation Force's website on the *News and Alerts* page at <https://www.conservationforce.org/news-updates-alerts>.

2. POSITIVE DEVELOPMENTS FROM CONSERVATION FORCE'S *EMERGENCY AFRICAN COVID CONSERVATION FUND*:

You already know the horror of COVID-19, so nothing of that will be repeated here. There are some positive developments arising from Conservation Force's emergency fund that may further conservation long into the future.

Conservation Force's Emergency Fund was the first such relief fund to be established and as of this date has injected the most money in the hunting fields when and where needed. The full gross amounts have been passed to pledged operators in the field. The emergency relief was broadened to cover operations beyond Africa such as the Pinas Bay Village in Panama, Central America. This success is most remarkable because the amount injected on the ground far exceeds Conservation Force's own operating budget. The Force has lost most of its own support during the course of the pandemic and has operated at a loss the whole time it passed on all those conservation dollars for the three purposes. Those three purposes are to secure the area habitat by continued operator presence/occupancy, control of poaching and to maintain connected rural community investment. Those are the three pillars of enhancement. Conservation Force's funding of conservation projects has always far exceeded its operating overhead budget, but we have now achieved that while operating in the red. The Force can look back at the Earth Day launch with pride, but there is more.

First, despite operating at a loss we have established a permanent system documenting and recording the operator by operator enhancement arising from the donations to the area operators and their use of those funds. The FWS has agreed to consider the emergency funding and underlying activity it provides as proof of enhancement for trophy import permit finding purposes. This system will serve the hunters, their operators and all concerned for many years.

Conservation Force is the unquestioned leader in conservation permitting so this is added documentary proof of enhancement in the right hands. It is Conservation Force that spent nearly a month at the beginning of the year on the ground in Zambia solving the community income participation, lion, leopard and other management issues and has ended the year in endless ZOOM conferences with Mozambique interests to establish lion import permits. We also sponsored the new, updated national elephant action plan in Zimbabwe. These are all *smart projects* connected to enhancement necessary for trophy importation.

Second, the Fund has contributed to the maintenance of all the relationships necessary to serve and assist Africa with the burdensome regulatory impediments and trophy import road blocks of today. The web of relationships necessary for continuing conservation is still intact. It is very much alive despite the boarder closures. The Force has new and renewed MOU's with African range states and is assisting countries with elephant, leopard, lion and other national action plan renewals as well as necessary regulatory reporting to CITES, the EU and FWS.

Third, and dear to our hearts, operators and governments are asking us to continue the enhancement arrangements on a permanent basis after COVID-19 runs its course. Operators want to convert the emergency relief agreements into long term conservation and enhancement partnerships. These partnerships are based upon trust and common conservation goals and beliefs. Our unique legal and technical skills as well as public charity status qualifies us perfectly for a longer term working relationship for conservation and regulatory compliance.

Conservation Force is much more than a proactive hunting advocacy organization though we certainly do that well. First and foremost we are a force for conservation, hence the name the Force. For decades our rigidly monitored conduit charitable funding and legal/ biological technical assistance has been indispensable to hunters, operators and wildlife departments. In the past we have been documented to be the leading hunting based conservation NGO in AFRICA in a survey of 290 conservation organizations. These new partnerships with more operators in the most excellent countries in conservation (yes they are) will be an expansion of our conservation role on an area operator by area operator basis. This is a dream coming true.

Also, take note that with the cancellation of all the major hunting conventions Conservation Force is extending its emergency fund into 2021. We are inviting tax deductible operator dedicated donations for your favorite operators who then in turn enter into the pledge agreement to expend the sum on the three enhancement purposes and to the necessary reporting. That said; take care not to direct what little remains of Conservation Force's operating funds to others.

3. TROPHY IMPORT PERMITTING IMPROVED BUT BACKLOGGED

Conservation Force has long been the unchallenged expert of all conservation and legal facets of enhancement import permitting from cradle to the grave, i.e., from curative field work to seizures for invalidity arising from technical errors. It is what we call "conservation permitting" congruent

with the underlying *conservation hunting*. One cannot exist without the other. In short, we are positioned to know that the system is broken. We also served of the Secretary's International Wildlife Conservation Counsel which explored some of the trophy trade impediments.

There are still many hundreds of backlogged trophy import permits and the backlog has grown worse despite the reduction in applications resulting from COVID-19 Pandemic safari cancellations. Clearly there are all kinds of negative consequences. Certainly, as courts have long ruled, delayed permits are denied permits (Not to imply that litigation is necessarily the answer when government agencies can do no wrong under the *Chevron Judicial Rule* that favors expert agency discretionary decision making). The negative consequences are real. Valuable hunting areas in Tanzania have been lost and flipped to other more intrusive uses. Some species and programs that would benefit from the stimulus and revenue are being discouraged and even scuttled. When ESA enhancement based import permits are delayed or denied, the local rural people as well as the recovery of the listed species are negatively impacted. The administration of the ESA then tends to deny deliverable benefits and obstruct range country programs. Some of those programs are the most excellent and successful in the world supporting the largest populations of those animals. Range nation programs, especially the best, should be supported cooperatively and rewarded. So it is important to identify and solve import permitting problems.

There are several reasons for the growing backlog. They include a series of suits, the extreme difficulty of the more intensive case-by-case method, the lack of FWS staff (capacity) which reduces foreign capacity that depends up the related revenue, the filing of incomplete applications, delays related to transitioning to electronic filing (not functional for five weeks) and even unwarranted, arbitrary political interference. Each is more complex than appears. Conservation Force's **Conservation Permitting Division** is deeply entrenched in solving all. We were largely responsible for opening and reopening hunting trade of many important species. It has been one of our hallmarks, so it has fallen upon us to do more.

The initial elephant litigation over the suspension of elephant trophies from Tanzania and Zimbabwe brought the roof down on the industry. Both SCI-NRA and the animal rights groups that intervened argued that the method of making findings were illegal for the same reasons. All the litigants argued that a prospective country-wide import determination legally required a full rule making. When the plaintiffs and anti-hunting intervenors won on the same point, FWS advised that the hunting community would regret their winning argument. FWS "withdrew" all positive ESA enhancements and CITES non-detriment findings for all species and countries and adopted the one hunt at a time method as a legally permissible alternative. The inconvenient truth is that the prior system was faster and more functional. The permits office has been playing catch up ever since. The irony was that the earlier positive as well as the negative findings had to be withdrawn as illegally having been made. So both the original positive as well as the negative Tanzania finding being challenged were invalidated. Also, the hard earned but new positive finding for Zimbabwe and Zambia were consequentially illegal as were decades of other findings. All those "withdrawn" findings have had to be remade, but worse, they now must be made hunt by hunt (permit by permit) instead of in sweeping country-wide determinations good for up to three years in advance for all hunts.

The original SCI-NRA litigation was followed by new suits by anti-hunters that challenged the legality of the alternative case-by-case method that has been adopted by the FWS. Of course, their object was to delay or prevent any import permitting any way they could. The last anti-

hunting suit was dismissed this year on June 16 so the case by case procedure has cleared those legal hurdles.

The political block at the appointee levels of FWS and DOI are the remnants of the “hold” President Trump made in tweets to hold up imports, that trophy hunting was a horror story and that he could not, in his opinion, imagine its conservation value. This all occurred before the Appellate Court invalidated the old method of making determinations. In fact, all elephant and lion imports for all countries were stopped from the date of the President’s first negative tweet. The November 18, 2017 internal directive to the Chief of Management Authority stated:

Until we get additional clarification on the intent and breath of the Presidents decision to review “Big game Trophy decision” we have been asked to abstain from issuing any permits for both Lions and Elephants.

In due time the FWS started issuing lion import permits one at a time, in all but Mozambique which we are diligently working to achieve. We are anxiously waiting for the processing of many hundreds of elephant import permits, which has not yet begun despite its importance and the legal hurdles being eliminate.

The case by case method has survived the legal test for now. FWS says there are hundreds of applications that are incomplete because they do not have the new case-by-case documentation. To process them would be to deny them. We found that most permits of all species were not conforming to the hunt-by-hunt procedure. Not by a long shot. Immediately upon learning this Conservation Force stepped up its permitting program including hiring employees and contractors for data collection in the field and to liaison with the respective foreign governments. We have been taking over all applications that we can to file “supplements” to properly complete them. We have been doing what the FWS and range countries do not have the will or capacity to achieve themselves.

On top of this FWS does not have adequate trained staff to make the tedious findings and to consult the operators and foreign authorities. This is snowballing with the decline of capacity and revenue of safari dependent foreign authorities. The system is broken and been compromised by arbitrary political interference with the help of the confused and confusing media.

I wish that there was more space to detail what Conservation Force IS DOING FOR YOU. We have lost most of our operating and project revenue, abandoned the hiring of staff and succession plans. Our capacity is in steep decline but rest assured we are still here for you. Please, help the Force if you can so we can be there for you. Invest in the Force to protect your interest. We ask nothing for ourselves.

Most sincerely,



John J. Jackson, III

Conservation Force

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I wish to make a contribution to one of Conservation Force's projects or initiatives in the amount of \$ _____
Project: _____

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African Elephant

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Leopard

Southern and Eastern Africa



Argali



Black Rhino



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