

Appeal to the State Game Commission

Importation Permit Denial

African Serval (*Leptailurus serval*)

for Erica Perras



Denial & Right to Appeal

The State Game Commission may set aside the decision of the Department to grant or deny an importation permit in accordance with the following procedures (19.35.7.18 NMAC).

Denial & Right to Appeal

The Commission may set aside the decision of the Department only if:

- The Commission determines that the decision of the Department was arbitrary or capricious
- The Decision was not based on law or regulation
- **Appellant provides additional data or proves significant impact that contradicts the data of the department (19.35.7.18 NMAC)**
- The decision of the Commission shall be final

State Game Commission Regulation

- As defined in 17-3-32 NMSA 1978, it shall be unlawful to import protected species, live animals, birds or fish, into New Mexico without first obtaining appropriate permits issued by the Director of the Department of Game and Fish.
- Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein.
- Permits will not be issued until all conditions and/or appeal processes listed herein have been satisfied under 19.35.7.8 NMAC.

State Game Commission Regulation

- 19.35.7.8 B states that the “Importation of State or Federal listed threatened or endangered species or C.I.T.E.S. (CITES) species and furbearers as defined in 17-5-2 NMSA 1978 will not be allowed except for **scientific study** or approved **restoration/recovery plans.**”

C.I.T.E.S. Defined/USFWS Prog.

- C.I.T.E.S. : Convention on International Trade in Endangered Species of Wild Fauna and Flora
- Administered by USFWS
- C.I.T.E.S. treaty is an international agreement signed by approximately 175 nations, called parties
- Aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival
- Roughly 5,000 species of animals and 28,000 species of plants are protected by CITES against over exploitation through international trade
- Protected species or populations are included in one of three lists called Appendices or Appendix I,II,III

C.I.T.E.S. Appendices Defined

- Appendix I: species threatened with extinction and receive the highest level of protection
- Appendix II: species not necessarily threatened with extinction but trade must be **controlled to avoid overutilization**
- Appendix II: species protected in at least one country that has asked for assistance in **controlling and monitoring international trade**

Appendix II: Felidae spp.

- Except the Felid species individually cited in Appendix I, all members of the family Felidae spp. are listed as Appendix II
- The most familiar member of the family Felidae spp. is the common domestic cat
- Specimens of the domesticated form are not subject to the provisions of the convention
- Based on this designation, the African serval (*Leptailurus serval*) are listed as Appendix II species

The African Serval (*Leptailurus serval*)

- The African Serval is a medium sized spotted African Cat
- Adults may reach 3 feet in length with a shoulder height of 2 feet
- Males can weigh up to 40 lbs.
- Are found in many regions of the African continent and inhabit scrub or savanna grasslands close to water
- Among swiftest and most agile of cats
- May run 40 mph, leap 10-12 feet horizontally and up to 6 feet vertically
- May live up to 20 years
- Preys upon birds, lizards, snakes, small mammals and rodents (The Columbia Encyclopedia, Sixth Edition, 2008)

Initial Encounter

- **10/15/2009:** NMDGF contacted by Las Cruces Animal control who reported large feline described as a “possible cougar” had been captured after it had entered the home of a local resident
- Animal later identified as one of two African Servals illegally imported into NM by Ms. Kelli Perras on or around 2007
- Kelli Perras as asked to voluntarily remove both servals from NM
- **10/28/2009:** Kelli Perras files incomplete importation application for the two servals (1 male and 1 female)
- **11/5/2009:** Dona Ana Co. Animal Control seize illegally imported and possessed bobcat from a vacant mobile home previously rented by Kelli Perras
- **11/6/2009:** The daughter of Kelli Perras, Erica, steps forward and admits she is the owner of the male serval and that her mother had provided false information/supporting documentation in her importation application to the Department
- Because Erica admitted that she was the “true” owner of the male serval and wanted it back, she was instructed that she may apply for an importation permit for Dept. review

Importation Application – Erica Perras

- 12/29/2009: Erica applies for importation of 1 neutered male *Leptailurus serval* (African serval)
- While applying for the importation permit, Erica contacted the USDA and applies for a Class C Exhibitor's license (**pending**)
 - USDA Class C Exhibitor's license only covers the facility standards and humane housing of mammals kept in captivity
 - It does not license or permit the possession, ownership or importation of the species held in a licensed facility
- In her application, she listed the purpose for the importation as “**educational use of a pet animal**”
- During the review process, it was determined that African servals are listed as C.I.T.E.S. Appendix II

Denial and Appeal Notice

- 01/11/2010: LE Division sends notice of denial based on 19.35.7.8 B NMAC
- 19.35.7.8 B states that the “Importation of State or Federal listed threatened or endangered species or C.I.T.E.S. species and furbearers as defined in 17-5-2 NMSA 1978 will not be allowed except for scientific study or approved restoration/recovery plans.”

Basis of Appeal (Erica Perras)

02/02/2010 - Letter received from Erica asks the Commission to grant her appeal based on the following:

- That the Department's decision was arbitrary and capricious (Dept. has allowed other CITES imports "without consequence")
- That the Department's decision was not based on law or regulation (States that Rule cited by the Dept. does not apply because servals are not an Appendix I Threatened and Endangered C.I.T.E.S species)
- And because the appellant had provided additional data or had proved that there is significant impact that contradicts the data of the department (Erica asserts that there is "no conflict" with native species.)
- **NMDGF Denial Letter in Commission Packets (01/11/2010)**
- **Erica Perras Appeal Letter & Presentation in Commission Packets (Letter received by NMDGF 02/01/2010 & presentation received 04/05/2010)**

Review Department's Record

- Review of Importation Requests

A recent audit of all importation permits revealed that **1,084** permits have been issued by the Department since 2000

- Of those 1,084 permits, a total of **7** importation permits were **mistakenly issued for CITES listed species for private pet ownership**
 - Of those 7 importation permits
 - 1 person = 2 permits for 2 African servals (residing in TX & concerned about ability to go to veterinarian services which would require crossing into NM; NA/not in NM, occurred - 2007)
Other permits = 2 Asian leopards (same as above), 4 chameleons, 5 ball pythons, 1 red tail boa constrictor, 2 kinkajous
 - All other CITES species imported (approx. 360) were done under:
 - Temporary Importation Permit (an expedited basis provided that the animal will not be in the State for a period of more than 30 days & conditions listed on the application will be required)
 - Zoo Permit (genetic/species exchange – can lead to restoration/recovery)
 - Falconry (USFWS Federal Permit)
 - Rehabilitation (restore health/restoration & release)
 - Service Animal (assistance to disabled individuals)
 - Propagation (which includes sources)
 - In conjunction with Scientific/Education permits from CSD = native species
- Distinctly different consideration/allowance vs. **“use as an educational pet animal”** which is the information from Erica's application 12/29/09

Importation Approval/Actions

- Once aware of any **illegal** importation it is standard that an investigation is conducted and voluntary compliance is sought (1st occurrence, similar to the situation in this case)
- Once aware of **improper importation** of species, halt any further importation of that species

Department's Response

In her appeal letter, Erica indicates that the Department's decision was not based on law or regulation because:

- Her application was denied based on the fact that *Leptailurus serval* is a CITES Appendix II listed species and that
- “CITES Appendix II and III species do not apply under the law, because Appendix II and III listed animals are not threatened or endangered species as defined by CITES.”
- Erica also states that “The intention of the rule 19.35.7.8 B was to protect threatened or endangered species under CITES Appendix I, not to ban commonly kept exotic pet animals.”
- 19.35.7.8 B does **not differentiate between** the CITES appendices (I was originally involved in this rule's promulgation)
- 19.35.7.8B has 3 different considerations (1 for T&E species, 1 for CITES species & 1 for furbearers)

The purpose of the CITES provision is to minimize New Mexico's role in facilitating the trade of CITES species & support federal concerns over species worldwide

Department's Response

- Erica asserts that she has provided additional data or proof of significant impact that contradicts the dept.
 - In her appeal letter, Erica list 19 CITES species she observed for sale in local pet stores
 - Dept. records indicate that the Dept. did not issue an importation permit to any of those pet stores for these species
 - Officers have conducted an investigation and the pet stores are currently being brought into cooperative compliance
 - Until the current importation rule is revised, the Department **will not issue importation permits for any CITES listed species except as permitted by Rule (actively denied serval species in 2009 & 2010)**
 - Erica has asserted that the importation of an African serval could present no conflict with native wildlife if it were to escape
 - The Dept. does not support Erica's interpretation of the Commission's importation rule
 - And animals that are predators, like serval's, could potentially compete with native predators and prey on native species
 - An escaped serval can present a public safety risk/concern (that's how this case started)
 - There is always a potential for disease transmission

Other Letters & Notices

- 2/22/2010: Letter to Governor Richardson from Karel Perras requesting that the serval be allowed into NM
- 2/23/2010: Dept. issues Temporary Transportation Notice to Kelli Perras allowing her to transport two servals through New Mexico to Arizona
- 2/24/2010: Dept. sends response to Karel Perras outlining reasons for denial
- 2/24/2010: At Erica's request, Temporary Transportation Notice is amended to allow Erica to conduct transport

Importation Rule – Proposal/Amendment Summer 2010

- The Importation Rule is currently under Department review for future consideration by the State Game Commission
- It is anticipated that a draft will be posted for public review by the end of April, 2010
- Proposals under consideration - will be more flexible and while maintaining our mission to protect native wildlife populations and the public
- It is anticipated that these proposals will be presented to the State Game Commission in July, 2010
- It is also anticipated that a final rule will be published by July or August 2010
- During this process, the importation conditions for CITES listed species will be subject to Commission review
- **The public is encouraged to participate**

Importation Rule – Proposals

Summer 2010

- Give the Director authority to create a list of species for importation (domestic, permitted & conditioned importation, including flexibility to move species around on list)
- Create a new level of appeal that would go to Director 1st, Comm. 2nd
- Allow pet shops the ability to obtain commercial importation permit/fee
- Consider allowing health certificates to be issued once animals arrive
- Consult with USFWS over CITES concerns/prohibition related to importation
- Consider conditioned limited importation of predatory, dangerous & venomous species while indemnifying NMDGF and requiring notice provisions and importers accepting all responsibility for animals risks and transfers

Summary of Concerns

- State law gives the State Game Commission and Director jurisdiction over the importation of non-domesticated live animals into New Mexico (17-3-32 NMSA 1978, 19.35.7 NMAC)
- The State Game Commission adopted a prohibition against importation of State or Federal listed threatened or endangered species or CITES species except for scientific study or approved restoration/recovery plans (19.35.7.8 B)
- The exceptions apply to NMDGF permitted zoos, scientific research, rehabilitation and religious permits (19.30.9, 31.10.9, 19.35.5, and 19.35.6 NMAC)
- Allowed approximately 360 CITES species imported as per conditions or requirements above
- **NMDGF (Law Enforcement Division) – mistakenly allowed 2 serval/2 permits (another 16 animals/7 permits) imported into state 2001-2008 as pets.**

Department's Recommendation

- Uphold the denial because it was based on current rule that prohibits the importation of CITES listed species
- Allow Dept to work on addressing importation amendments that are:
 - Consist with conservation/Mgmt goals
 - Protect native species disease, predation, hybridization & public
 - Has public input (not individual appeal/input)
 - Supported the Commission Rule Process