

June 2, 2014

Mr. Cade London
Special Assistant, USFWS International Affairs
Advisory Council on Wildlife Trafficking
4401 North Fairfax Drive, Room 110
Arlington, VA 22203
VIA EMAIL: cade_london@fws.gov

Re: Request for Public Input - Advisory Council on Wildlife Trafficking Public Meeting June 9, 2014

Knife Rights represents America's millions of knife owners, knifemakers, scrimshaw artists, knife retailers and suppliers to knifemakers and scrimshaw artists, many of whom own legally acquired ivory or knives with ivory components. And, as it turns out, many also own a wide range of other items that include ivory, and so we represent these members' interests as well.

I am writing, once again, in opposition to imposition of rules by the U.S. Fish and Wildlife Service (USFWS) that will effectively ban all or most commercial sales and trade in ivory within the United States. The USFWS claims to be "Conserving the Nature of America" while at the same time disrespecting the very principles that lie at the core of America's "nature." This nation was founded on a respect for its citizen's rights, from the Declaration of Independence through the Constitution and our Bill of Rights. The core "nature" of this country is that we are a country of laws, that even the unpopular have rights to be respected and that, above all, we defend individual rights.

However, this USFWS action ignores the "nature of America," unfairly and unconstitutionally persecuting honest ivory owners who find their investment in legally acquired ivory "taken" by government edict and made worthless, their livelihood stolen from them in some cases. They now find themselves not only treated as criminals, but also without any onus on the government to prove illicit activity. Rather, they must prove their innocence, another offense to America's longstanding legal principles and protections of its citizen's rights, an offence to America's "nature."

Only when the country or its citizens are threatened by major harm may these rights be abridged and then only in so much as the minimum possible to address the harm. Where is the harm to this country or its citizens? How does the sale and trade of legally held pre-ban ivory in this country threaten anyone in America? By the USFWS' own admission, as recently as last year, there is no significant trade in illegal ivory in this country and USFWS has acknowledged even this year that they "do not believe it is necessary for ensuring the conservation and sustainable use of the species to retroactively apply current import/export restrictions to domestic activities involving specimens that were legally imported prior to the imposition of these restrictions," yet that is exactly what they are doing. USFWS is acting disingenuously, at best, and illegally and unconstitutionally at worst.

It is intellectually dishonest for this Council and USFWS to embark on this ill-conceived effort in a poorly-concealed attempt to take out its frustrations with the illegal trade in ivory that occurs almost exclusively in Asia, and principally in China, on the backs of the American public. There is not a shred of factual evidence to suggest that punishing American citizens for their investment in perfectly legal ivory will have one iota of influence on the black market in illegal ivory. It goes against all human experience to believe that this effort will do anything but adversely affect law-abiding Americans. It will not do anything to stop the poaching. It will not do anything to change the cultural aspects of the illegal ivory trade in Asia and China.

Moreover, the real world evidence that we are already seeing in the market here in the U.S. is that the so-called unintended consequences (which are hardly unexpected by anyone with an understanding of basic economic theory and human nature) of this ill-conceived rulemaking is the destruction of culturally significant antiques and other items containing ivory because auction houses and dealers are unwilling to risk any possible adverse attack on their business by USFWS.

As a direct result, individuals who have no choice, for any variety of urgent reasons, but to sell their perfectly legal personal investments which contain ivory are removing ivory embellishments on furniture, small historically and culturally significant items, music instruments and the like because even significantly reducing the value of these items is their only alternative to not being able to sell them at all in situations where they have no alternative.

This is nothing less than cultural genocide which is not one bit different except on an individual scale than when the Taliban destroyed the Bamiyan Buddhas, an outrage that was rightfully condemned by the world. This cultural genocide is a direct result of this Council's and the USFWS' actions to date. Each member of the Council is directly responsible for each and every instance of this appalling result of your actions. This is not just a crime against Americans, but is now a crime against all of the world.

Knife Rights and all those we represent unequivocally support science-based conservation efforts that have proven successful in posting significant gains in elephant populations in Africa and Asia over the past few decades. Knife Rights and those we represent unequivocally support practical and lawful efforts to defend elephants in the field from poachers as well as lawful enforcement activities that directly target illegal black-market trade in ivory. This ivory ban accomplishes none of these effective and proven objectives.

To the contrary, it is reasonable to expect that the consequences of this irrational and unlawful ivory ban, although not unforeseen by many, may well be an increase in the poaching and senseless slaughter of elephants. That is the exact opposite of the desired outcome.

This action is not supported by facts or science, or even by simple common sense, unlawfully punishing America's legal ivory owners. All this flies in the face of the reality that there is no significant illegal ivory problem in the U.S. Studies by ETIS (the Elephant Trade Information System set up by CITES) indicate that virtually none of the ivory from elephants being poached in Africa today is coming to the U.S. ("African Elephant Summit Background Document 2013," pages 16-18). Another study by ETIS indicated that laws passed in the U.S. have little effect on elephant populations ("Martin Stiles Ivory Markets in the US," page 5). These same studies indicate that the U.S. is already the world leader in the fight against trafficking of illicit animal parts, out of 89 countries studied, and by a significant margin. Finally, the U.S. Fish and Wildlife Service, charged with enforcement of this ivory ban, in their September 2012 Fact Sheet states, "we do not believe that there is a significant illegal ivory trade into this country."

The huge increase in demand for ivory in China, which prompts continued poaching, has been triggered by the significantly increased buying power of China's citizens, which has driven up the price of many items, and their government's lax controls on black-market ivory. Nothing that penalizes owners of legal ivory in the U.S. will have any effect on that demand. Taken together with the studies referenced, clearly, this ban is a hypocritical and ineffective solution in search of a problem.

While promoters of this ivory ban claim that existing ivory owners would be protected if they provide proof of their ivory being legal, that claim is disingenuous, at best, unrealistic as well, and also unlawfully puts the burden of proof on the owner or seller who is guilty until he proves himself innocent.

While the new rules excludes "antique" ivory that is over 100 years old, it also requires proof that the ivory is antique, which doesn't exist in the vast majority of cases. Suggested alternative means to provide proof when there is no paper trail may be impossible, unrealistic or unreasonable in many, if not most, cases. Any scientific analysis that can provide ironclad proof of antiquity costs so much that it is beyond the reach of the majority of ivory owners.

Ivory which isn't "antique," but which was legally imported prior to restrictions (1975 for Asian elephant ivory and 1990 for African elephant ivory), represents the majority of ivory in the U.S. For most owners of ivory there's no proof to be had because any ivory imported prior to the existing import restrictions did not require any documentation. Any ivory imported since the restrictions were in place only required documentation for import, not subsequent sale within the U.S. This represents a Catch 22 for ivory owners and those who work or trade in ivory.

And, it's a Catch 22 made even worse for there being no requirement that USFWS provide proof of the ivory being illegal. Beyond this unreasonable basis for prosecution, Knife Rights is also seriously concerned about enforcement by USFWS agents who have no ability to differentiate between now-prohibited elephant ivory and other forms of still legal ivory. Many other types of ivory, both fossil and from other animals, and even faux ivory from flora, appear the same to the minimally trained eye. Some are virtually impossible to differentiate without detailed and very expensive laboratory analysis. Without need to prove guilt, they are free to take a "*kill them all, let God sort it out*" attitude toward enforcement—arrest anyone and seize anything that might possibly appear to now be illegal and let the innocent victims deal with the terrifying and expensive legal assault by the government. That all-too-likely possibility should be offensive to law-abiding Americans and this Council.

This effective "taking" of heretofore legal private property of millions of citizens is a violation of the Fifth Amendment to the Constitution of the United States. It is also an offense to longstanding American rights, freedoms and values of fairness and equity. Ultimately the adverse impact on American citizens will be in the ***Billions of Dollars*** for no appreciable positive impact on the real problem, poaching in Africa which is supported by the illegal trade in black market ivory in Asia, and principally, in China.

If the goal is to reduce poaching, as is claimed and which should be the primary focus of such efforts, then the funds wasted on this irrational attack on Americans ivory owners could be far better used to provide additional protection for the elephants in their native lands and to push those countries in Asia that represent the vast majority of traffic in illegal ivory to better police their own countries.

This misguided ivory ban is ill-conceived, offensive and illegal. The new rules should be immediately rescinded and we should go back to what has effectively worked for decades to restrict illegal trade in ivory in the U.S. and that does not unfairly penalize American ivory owners for others' illegal and immoral activities that continue to threaten elephants, and which this ivory ban does nothing to ameliorate.

Respectfully submitted,

Douglas S. Ritter
Chairman