

New policies on the use of instruments containing elephant ivory are having a calamitous impact on musicians, orchestras, and concert presenters. **The League of American Orchestras is taking a leadership role in representing the interests of musicians and orchestras in this crisis, while remaining supportive of conservation aims.**

# Saving Elephants

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by Heidi Waleson

# and Instruments

**O**ne morning last May, the Pro Arte Quartet arrived in Brussels, where they were scheduled to play concerts.

Two members, violist Sally Chisholm and cellist Parry Karp, were carrying instrument passports issued by the U.S. Fish and Wildlife Service, which allowed them to take their instruments, which contained small amounts of ivory, in and out of the U.S. “We were told we had to get them signed at the port in Europe as we entered and left,” Chisholm said. “So we presented the passports at the airport, but the customs officers had never seen one before, and they had no idea what to do with them.”

So began a lengthy ordeal, with the two musicians cooling their heels in the airport (they declined to leave their instruments behind), while calls were made, and the other

members of the quartet, who had already passed through customs and immigration, went to the U.S. Embassy to get help. After six hours, a contact in the Belgian government supplied the correct information. The passports were stamped, and the two musicians were allowed to enter the country with their instruments. “There’s fine print in the Belgian rules that says if the object is for personal use, you don’t need a certificate,” Chisholm says. “Our passports were stamped P, for personal use, but because it’s such a new process, everything is in flux.” The saga was almost repeated when the musicians left Belgium: once again, the officer on duty had never seen an instrument passport. Happily, another one had. “She said, ‘I was there when they came in. It’s fine, sign it!’” Chisholm recalls.

Chisholm’s tale represents a new complication in the life of a traveling musician, one that is likely to become more frequent rath-

er than less. In July 2013, President Obama signed an executive order that called for an interagency national strategy to combat illegal wildlife trafficking, estimated to be a \$10 billion global industry, in the U.S. and abroad. On February 25, 2014, the U.S. Fish and Wildlife Service issued Director’s Order 210, one component of the strategy; it imposed a near-total ban on the importation of any elephant ivory. (The next step in the enforcement process, still to come, is the issuance of proposed regulations that would effectively ban domestic sales of objects containing ivory.) The original Director’s Order meant that most musicians owning bows or other instruments containing even small fragments of ivory could not take them on international tours, since they would be unable to bring them back into the U.S.

The League of American Orchestras immediately assumed a leadership role in representing the interests of musicians in



Najeem Lee

League of American Orchestras Board Chair Patricia A. Richards joins fellow music advocates in preparation for a meeting in the League's D.C. office with senior Obama Administration officials regarding preserving the use of existing musical instruments containing ivory. Left to right: League Vice President for Advocacy Heather Noonan, Richards, American Federation of Musicians Legislative-Political Director Alfonso Pollard, and The Recording Academy Director of Government Relations Todd Dupler.

the face of this crisis. Heather Noonan, vice president for advocacy at the League, assembled a consortium of stakeholders, including the American Federation of Musicians, the Recording Academy, Chamber Music America, the American Federation of Violin and Bowmakers, and the National Association of Music Merchants, and brought the concerns of musicians to the attention of the Fish and Wildlife Service, the Advisory Council on Wildlife Trafficking, and other policymakers. Meticulously structured testimony pointed out that the musical instruments in question were legally crafted, with legally obtained ivory, and that their transportation across borders had no impact on elephant poaching. Noonan's goal was to seek solutions that would promote wildlife conservation goals while protecting international musical activity. "We fully support elephant conservation and anti-poaching efforts," she says. Initial meetings arranged by the League bore fruit. In May, USFWS revised the order, saying that non-commercial movement of musical instruments "do(es) not contribute to poaching or illegal trade," and permitted instruments that "had not been placed in commerce after February 25, 2014" to be eligible for the permits necessary to cross borders.

The amendment addressed the most immediate problem, making it possible for

many more musicians to apply for permits to travel with their instruments, but significant difficulties remain, both for non-commercial travel and future sale. An additional complication is that a number of states, including New York and New Jersey, are in the process of enacting their own bans on the sale of objects containing ivory within their borders.

The League, working with the coalition, which has now grown to include sixteen organizations, including the International Conference of Symphony and Opera Musicians (ICSOM) and the Association of Performing Arts Presenters, continues to lead the effort to address this multi-layered and complex issue. In recent years, Noonan and her partner in the League's Washington, D.C. office, Najeem Lee, the League's government affairs and education advocacy manager, worked successfully on travel solutions for musicians in the face of new rules on pernambuco, a protected wood species used

in fine bows, as well as on troubling airline policies for carrying instruments onboard planes and the unpredictable procedures for visas for foreign musicians. The two are now giving testimony, meeting with policymakers, and working on negotiating long-term solutions to protect the use and ensure the preservation of musical instruments within the ivory ban. The League has also published detailed information and offered individual assistance as musicians, orchestras, and presenters navigate the evolving rules. Vicky Dominguez, who as operations manager of the Boston Symphony had to deal with the new ivory rules for the orchestra's Asia tour in the spring, says, "I couldn't have done it without Heather. She had the right contacts, and all the information about changes in policy. I called her every day."

It has been illegal to buy and sell most raw elephant ivory for decades. The Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES), which currently has 180 member nations, first listed the African elephant as an Appendix III species in 1976; by 1990, after elephant populations had dropped by 50 percent, elephants were moved up to Appendix I—the most highly

regulated category of protection—and commercial importation of ivory into the U.S. was banned. Individual countries make their own laws about how to enforce protection of endangered species that are flagged by CITES: in the U.S., African elephants were listed as threatened under the Endangered Species Act in 1978, and in 1989, the African El-

phant Conservation Act imposed a moratorium on the importation of African elephant ivory. (Hunting trophies, two tusks per hunter per year, were exempted, and are still allowed.) Director's Order 210, a new enforcement mechanism, designed to plug a number of perceived loopholes in the law, stated that no ivory-containing object that had been purchased after February 26, 1976, could be imported into the U.S.

**On February 25, 2014, the U.S. Fish and Wildlife Service issued a near-total ban on the importation of elephant ivory. The upshot: musicians with instruments containing even fragments of ivory could not take them on international tours, since they would be unable to bring them back into the U.S.**



The impact on musicians was dramatic, since many instruments that were made before the various bans took effect contain small amounts of ivory. Ivory was regularly used to protect the tips of bows and to hold the bow hair in place. Some bows also have ivory frogs. Instruments may also contain ivory: Chisholm's viola, which was made in Cremona in 1680, has decorative ivory inlays. Small amounts of ivory can also be found in a surprising array of woodwind, brass, and percussion instruments. When raw elephant ivory commerce was banned, makers switched to other materials, such as mastodon ivory and synthetics, which are used for piano keys. However, pre-ban bows with ivory tips are still in circulation, bought, sold, and transported across borders by performers on a regular basis. Yung

policy has far-reaching implications for the future of cultural exchange."

"The increased focus on ivory with the February order put a brighter light on rules that have been on the books for 38 years," Noonan points out. Permits for objects containing elephant ivory have long been required, but the rules were not enforced. After the 2013 CITES Conference, recognizing that stricter enforcement was on the way, USFWS supported the creation of a musical instrument passport. This document would allow an instrument with permitted ivory or other protected wildlife material to cross borders, with multiple exits and entries, for three years, rather than requiring an individual CITES permit each time. These passports have been available since last year, though relatively few musi-

musicians have permits or passports, they must make appointments in advance to have their instruments inspected when they leave and enter the U.S. "If all musicians with protected species material obtain permits and return to travelling with their instruments, the whole system could be paralyzed," Noonan says. "Inspectors would be overwhelmed with inspecting traveling musicians' instruments that are simply being taken out of the U.S. for performances and brought back home again."

Further complicating matters, rules for permitted materials vary from country to country, so a bow or instrument that is eligible for a U.S. passport might not be allowed in abroad. Conversely, non-U.S. musicians, who must apply for permits in their own countries (there is no general passport system in Europe as yet), might find that the rules are stricter in the U.S., and their instruments might not be permitted to enter—or could even be confiscated. Inspection appointments add layers of time and effort to their travels.

Incomplete attempts at compliance may even backfire. When the Budapest Festival Orchestra arrived to play concerts in the U.S. this spring, the instruments with protected species were declared, but the orchestra did not have all the correct paperwork, according to USFWS. Several bows were held at the airport, and returned to the orchestra, upon payment of fees, when it left the country. And in August, two teenaged bagpipe players, attempting to re-enter the U.S. from Canada, had to surrender the ivory fittings on bagpipes because they had attempted to enter through a border that was not an approved USFWS entry port for ivory. After obtaining the required permit to use a non-designated port, the fittings were returned to the students.

The detailed federal regulations that would fully implement the proposed new limits on domestic sale are still to come, but as it stands now, Director's Order 210 will have a devastating impact on future sales. A bow containing ivory that is bought or sold after February 25, 2014, will not be eligible for an instrument passport to leave and re-enter the U.S., thus slashing the value of something that was once worth tens of thousands of dollars. Bruce Ridge, chairman of ICSOM and a bass player in the North Carolina Symphony, points out, "The majority of musi-

Rich Ruggiero, Chief of the Africa Branch of the Division of International Conservation at the U.S. Fish and Wildlife Service, is interviewed by reporters as he examines contraband ivory.



Gavin Shire / USFWS

Chin, a bowmaker and the president of the American Federation of Violin and Bow Makers, estimates that there are "millions."

### The Challenges of Compliance

With confusion about the rules and fear that their instruments might be confiscated, the ban "has caused mass hysteria around the world," for musicians, says Yung Chin. "Musicians are always traveling; their schedules are planned far in advance. One of my customers, a member of one of the most famous European orchestras, says that they are openly talking about whether they want to come to the U.S. This government

musicians have applied for them, and the official form for applying for a passport was newly minted just this spring.

However, as the Pro Arte members discovered, a consistent system for enforcement is not yet in place abroad. Nor is the U.S. system reliably up and running. For example, USFWS has only 120 wildlife inspectors nationwide, so only eighteen ports can even process instruments with wildlife material, and only nine locations have inspectors available to process instruments that contain both plant and animal material, such as ivory and Brazilian rosewood. There are many layers to compliance: not only

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cians struggle to make a living and pay their mortgages. These instruments are a part of our pension. For example, one of my antique bass bows has an ivory frog. I was advised to keep it, as a planned part of my retirement. As the restrictions stand now, that bow is essentially worthless. It's impossible to sell, because anyone buying it can't travel outside the country with it."

Should a violin bow containing two-tenths of a gram of ivory that was legally obtained and worked be included in these sweeping new rules? What is driving the broader move to restrict trade in existing African elephant ivory products in the U.S.? Leigh Henry, senior policy advisor for the Wildlife Conservation Program at the World Wildlife Fund, says that the new enforcement rules are essential to halt the scourge of elephant poach-

**Elephant poaching is a highly organized and sophisticated operation, using helicopters and automatic weapons; poachers are opposed by rangers who may not even be armed. Globally, the illegal ivory trade has more than doubled since 2007.**



#### Poaching, Politics, and Profit

The massive rise in poaching is fueled by the increased demand for ivory coming from newly wealthy consumers in Asia, especially China, where ivory objects are a prized status symbol. At about \$10 billion annually, illegal wildlife trafficking as a whole has become one of the most profitable international

criminal activities, on a par with arms and drugs. Elephant poaching, once the work of individuals, is now a highly organized and sophisticated operation, using helicopters, night scopes, veterinary tranquilizers, and automatic weapons; poachers are opposed on the ground by a handful of rangers who may not even be armed. Globally, the illegal ivory trade has more than doubled since 2007. "The seizures are no longer a tusk here or there, but large shipments of a ton or two tons," says Henry. And it's not just the elephants and the environment that are in danger. "Ivory poaching and smuggling have been linked to terrorist groups like Al-Shabaab and Boko Haram who use it to fund their operations," Lieberman says. "Poaching is harming communities across Africa. Three things have to happen: stop the poaching, stop the trafficking, and stop the buying."

And the U.S. is a large ivory market. "In the U.S., the complicated legal system, with its exceptions for antique ivory, made it easier for new, poached ivory to be laundered," Henry says. "The U.S. market was providing cover for illegal trade." In recent years, there have been a number of large-scale seizures



U.S. Fish and Wildlife Service personnel with objects crafted from illegal ivory. On November 14, 2013, FWS destroyed some six tons of elephant ivory seized in violation of U.S. wildlife laws and treaties, which are designed to protect elephants from extinction. Elephant poaching in Africa is at its worst levels in decades.

of a ton or more of smuggled ivory objects, disguised as antiques, from dealers in Philadelphia, Chicago, and New York. “One of the important things in the new law is that the burden of proof has been shifted to the seller. That’s how clamping down on antiques helps save elephants,” Henry adds. The ban also positions the U.S. to “encourage other countries to take action on illegal ivory,” says Craig Hoover, chief of the Wildlife Trade and Conservation Branch of USFWS.

However, this burden of proof has created a new layer of complications for traveling musicians. Boston Symphony Operations Manager Vicky Dominguez estimates that she spent the better part of a month organizing the documentation and complying with regulations for the orchestra’s Asia tour last spring. “I have five enormous file folders of documents,” she says.

First, the players had to determine whether their instruments contained controlled wildlife products—tortoise shell and

rosewood as well as elephant ivory—and when they were manufactured. “We encouraged everyone to put these instruments in cargo, rather than hand-carry them, so that we could do all the permits.” Dominguez, in constant communication with the League and USFWS, created a spreadsheet for all 47 instruments and bows, labeled their contents with the proper scientific terminology, and got the CITES permits.

David Freudenthal, director of government affairs for Carnegie Hall, says that Carnegie, which presents dozens of ensembles and artists from abroad every season,

**The Wildlife Conservation Society’s Susan Lieberman is sympathetic: “The Director’s Order was an effort to control the ivory trade, not to control musicians.”**

## Resources

The League is continually updating online resources to help musicians and orchestras understand ongoing policy changes for musical instruments containing protected-species material. Find background, travel tips, and policy updates at the [Advocacy and Government](#) section of the League’s website.

To learn more about the broader effort to protect African elephant populations, visit the [Wildlife Conservation Society](#) and [World Wildlife Fund](#).

has been working feverishly to inform musicians and managers about the new rules and requirements, and if necessary, meeting the cargo at the ports to help smooth the way. “The artists want to do the right thing, but it’s challenging to have all the information in this fast-moving environment,” he says. “The biggest challenge among musicians, in addition to lack of information about the rules, is figuring out what species the instruments contain, and getting the document to assess when it was harvested.” The Bavarian Radio Orchestra sent several ivory-containing bows home before they tried to enter the U.S., but one bow was held back at the border; the orchestra is now negotiating to have it returned. “It’s an extra logistical, administrative, and financial burden, as well as the uncertainty of what could happen, which for a place like this is hair-raising,” says Freudenthal.

Karen Kloster, who coordinates tours for Columbia Artists Management, is dealing with a new level of logistics as a result of the ban. For example, how much extra time needs to be built into the schedule for the CITES inspection of a small ensemble that arrives from Europe, is hand-carrying instruments, and needs to make a connection to elsewhere in the U.S.? Fish and Wildlife inspectors work Monday to Friday, 8:30 to 4:30, and many European flights arrive after those hours. Arrangements can be made for overtime—which costs \$115— but the inspectors have to be paid by U.S. check. Many of the inspection sites are not actually at the airport—the Newark one is downtown, miles from Newark Liberty Airport.

## Tools of the Trade

Based on her experience, Kloster suggests, “For an individual soloist, I’d say, remove any materials, or don’t travel with the instrument.” She recently helped violinist Anne-Sophie Mutter through a complicated U.S. entry with a bow permit, and says, “My feeling is she will not travel with any bow that requires it again.” Kloster also

**“The majority of musicians struggle to make a living and pay their mortgages. These instruments are a part of our pension,” says Bruce Ridge, chair of the International Conference of Symphony and Orchestra Musicians.**



Eric Arltter

insists that anyone she works with have complete documentation on their instruments, whether they contain endangered species materials or not, including proof of ownership, when it was purchased, and a letter from the maker or appraiser saying what materials are in it. “Musicians must be knowledgeable,” she says. “They must have the permit, and have the inspector sign it.”

Some musicians are opting to remove ivory. “I have changed almost 50 bows since February,” says Yung Chin. “You have to be very skilled to do it, and I can’t tell you that it will have exactly the same sound, or playability—a fraction of a change in height can make a difference. It depends on the musician; they have to decide if they can live with it.” Sally Chisholm has decided to get synthetic ivory for her bow. The inlays on the viola, however, cannot be removed without damaging it. “It is over 300 years old,” she says, “and I don’t have another one.”

The emotional attachment of musicians to their instruments adds a layer of anxiety. Violinist Colin Jacobsen says, “For any instrumentalist, the instrument is the voice. It’s an extension of your vocal cords, of your body. You spend years trying to find it. When I don’t have my instrument with me, I feel that I am missing a limb. So at the airport, the idea that someone who knows nothing about the monetary, cultural, and personal value of it could manhandle it is horrible. And what if the inspector says, ‘You tell me that’s mastodon, but it looks like ivory to me’? Could this be the time I come into the country, and my bow is confiscated?” Jacobsen, who visited the offices of several policy leaders in Washington, D.C. with Noonan and League President and CEO Jesse Rosen to talk about the effect of the ivory ban, was hopeful that the message got through—especially when a member of New York Senator Kirsten Gillibrand’s staff asked him to play. Indeed, in August, Senator Gillibrand and Louisiana Senator David Vitter, a ranking member of the Environ-

ment and Public Works Committee, sent a detailed letter to USFWS Director Dan Ashe, asking for clarification about how the new and proposed ivory regulations would affect the legal activities of interested parties in their states. Nashville Congressman Jim Cooper convened a discussion in his office this spring among music representatives and Fish and Wildlife staff to seek clarity on the current rules and foster a discussion of the challenges musicians face.

Noonan and her staff are in continual dialogue with USFWS and conservation groups, seeking constructive solutions. Craig Hoover of USFWS says, “We are looking for ways to accommodate certain activities, as we did with the change in the Director’s Order, that will not undermine our anti-poaching goals.” An economic impact study is now underway as part of the process for the proposed new rule to govern domestic sale of ivory; the rule will likely be

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Craig Hoover, chief of the Wildlife Trade and Conservation Branch of the U.S. Fish and Wildlife Service, in discussion at a meeting of the Convention on International Trade in Endangered Species of Wildlife Fauna and Flora.

released for comment early next year. The League and its partners in other national music organizations are continuing to negotiate with the goal of securing some kind of exemption for musical instruments that have a *de minimis* amount of legally harvested ivory and a reasonable process for documenting the origin of the ivory.

The next level of revisions to how the U.S. implements the CITES treaty is also an opportunity for accommodation. Noonan and her team are working towards getting a “personal effects exemption” for musicians traveling in and out of the U.S. with the tools of their trade. Musicians would still need an instrument passport to accommodate the requirements of foreign governments, but U.S. inspections would not be required; other countries might then fol-

low suit. “A personal effects exemption is allowed in CITES, but the U.S. rule is stricter. We don’t allow it in Appendix I species like the African and Asian elephant,” Hoover says. That could change. New draft rules will be proposed later this year, and finalized in next year’s regulatory process.

The Wildlife Conservation Society’s Susan Lieberman is sympathetic to the musicians’ situation. “Musicians with teeny bits of old ivory in their bows are not the problem,” she says. “The Director’s Order was an effort to control the ivory trade, not to control musicians. The U.S. government should be able to work out a simple system so that they can leave and return to the country. The issue of sale is more complicated—but musicians should have a clear record of when their instrument was made. Let’s hope that something flexible can be worked out.”

Through ongoing dialogue, the League has been tireless in working to find common ground with other organizations for whom ivory is a pressing issue. Like orchestras, the Wildlife Conservation Society is a cultural and educational institution. “We should come together,” Lieberman says. “We are coming from the same place, as cultural institutions, and we should be able to find common cause.” **S**

HEIDI WALESON writes about the performing arts and is the opera critic for the *Wall Street Journal*.

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