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Public Comments Processing  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS: BPHC  
Falls Church, VA 22041

*Submitted Via: Federal eRulemaking Portal: <http://www.regulations.gov>*

**Docket Number: FWS-HQ-IA-2014-0018**

Re: Recommendations for Resolutions, Decisions, and Agenda Items for Discussion at CoP17

I am pleased to submit these comments on behalf of the League of American Orchestras (the League) in response to the request by the U.S. Fish and Wildlife Service (80 Fed. Reg. 26948) for recommendations for potential resolutions, decisions, and agenda items for discussion at the seventeenth regular meeting of the Conference of the Parties (CoP17) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The League is fully committed to the goals of wildlife conservation and combatting illegal trade in protected species, and we appreciate the leadership the U.S. government has demonstrated in advancing consideration of non-commercial transportation of musical instruments in prior CITES proceedings.

We request that the U.S. offers resolutions and agenda items at CoP17 that will advance CITES policies related to non-commercial international travel with musical instruments containing protected species material. The process for traveling with musical instruments is in urgent need of improvement, and reasonable policy solutions can ensure that international cultural exchange is supported while at the same time advancing protections for endangered species.

The League leads, supports, and champions America's orchestras and the vitality of the music they perform. Its diverse membership of approximately 800, 501(c)(3) nonprofit organizations across North America runs the gamut from world-renowned symphonies to community orchestras, from summer festivals to student and youth ensembles. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands

of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners. Our organization is also an active participant in the wider international cultural exchange community, partnering with The Recording Academy, Chamber Music America, the American Federation of Musicians, the American Federation of Violin and Bow Makers, the National Association of Music Merchants, and the Performing Arts Alliance to communicate with musicians in the U.S. and abroad regarding compliance with international rules for travel with musical instruments that contain protected species material.

In 2012 alone, orchestras in communities across the United States are estimated to have engaged international guest artists on more than 1,200 occasions for multiple concerts and community programs and engagement activities.<sup>1</sup> These artists perform alongside U.S. musicians for concert audiences, and in schools and community settings. By inviting foreign musicians to perform and collaborate, orchestras provide American audiences the opportunity to experience a diversity of musical talent and encourage a supportive climate for U.S. orchestras to perform abroad. A sample of seven adult orchestras providing the results of their 2012-13 international tours report performing more than 60 concerts for nearly 120,000 attendees across the globe.<sup>2</sup> American youth orchestras also tour internationally, providing young U.S. musicians the chance of a lifetime to perform in the world's greatest concert halls and to engage in cultural exchange with young people from a diverse array of countries and cultures.

Every day, thousands of U.S. professional musicians, students, and private individuals use musical instruments in public performances, private events, educational pursuits, and for personal enjoyment. Musicians who make their living performing with these tools of the trade live in cities and towns, large and small, in every corner of the United States, and contribute to the economic strength, civic vitality, and educational vibrancy of their communities. International artists from beyond our country's borders are frequently invited to perform for U.S. audiences, multiplying the diverse array of offerings available to listeners. In ongoing international cultural and diplomatic endeavors, U.S. orchestras, small ensembles, and soloists tour internationally to perform for audiences across the globe. In the course of their careers, working musicians nationwide make a considerable investment in the highest quality musical instruments available to them and count on their instruments to enable them to hone their musical skills, advance their careers, and supply extraordinary musical experiences to audiences.

A great many musicians, particularly string players, perform with legally crafted and legally purchased musical instruments that contain elephant ivory, tortoise shell, reptile skin, and Brazilian rosewood. Very small amounts of ivory and tortoise shell may be found in an array of string, wind, percussion, and brass instruments. Reptile skin may be found on the grips of

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<sup>1</sup> 2011-12 League Orchestra Statistical Report.

<sup>2</sup> 2012-13 League Orchestra Statistical Report preliminary figures.

bows for stringed instruments and Brazilian rosewood has been used in the construction of stringed instruments. CITES policies regarding the travel rules for musical instruments have a profound impact on the cultural vibrancy and economic activity of musicians in the United States, and can significantly alter the environment for international cultural activity.

At the CoP16, the U.S. proposed a resolution on Frequent Cross-Border Non-Commercial Movements of Musical Instruments, which was adopted by consensus as Resolution Conf. 16.8. According to the pre-amble to the resolution, the proposal was intended to relieve, “administrative burdens for individuals who frequently move musical instruments manufactured from species listed in the Appendices to the Convention across international borders,” by providing musicians with the opportunity to obtain a single passport-like document in place of multiple permits required for exit and entry throughout multiple countries. While this effort to streamline permit procedures is appreciated, in effect it has resulted in the first broad implementation of CITES permit requirements on non-commercial travel with musical instruments, as the prior process was largely unimplemented and unknown to traveling musicians.

Following adoption of Resolution Conf. 16.8, we have been informing musicians of the new procedures, assembling the only existing comprehensive guidance for musicians attempting to navigate the new rules for travel with instruments, and responding to numerous daily inquiries and reports from individuals and groups – in the United States and across the globe – attempting to travel with existing, legally crafted musical instruments that contain protected species material. Experience to-date reveals severe challenges in navigating the CITES permit issuance and enforcement procedures.

We request that the U.S. pursue the following action at the CoP17:

- **Implement a “personal effects” exemption and exemptions for musical instruments transported by cargo under a carnet, which would allow legally crafted and legally purchased musical instruments to be transported through international ports without undergoing burdensome inspection procedures.** In online guidance related to U.S. domestic policy on African elephant ivory, the U.S. Fish and Wildlife Service says the following about exceptions for importation of noncommercial shipments (*emphasis added*), “Allowing imports for law enforcement and scientific purposes is in line with the Service’s mission to help conserve African elephants and stop trafficking in African elephant ivory. The other limited exceptions allow movement into the United States of legally possessed African elephant ivory that predates the listing under the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) for personal use as part of a household move or inheritance, *musical performances*, and traveling exhibitions. Each of these types of import must meet specific criteria. And unlike the commercial antiques trade,

*none of these types of imports has been used by smugglers to “cover” trafficking in newly poached ivory.*” Given that the international use of musical instruments through non-commercial movement across borders does not contribute to trafficking in endangered species, policies that protect the future use of musical instruments should be expanded under CITES. Parties gathered at CoP17 should explore every possible option related to travel with musical instruments as “personal effects” under Resolution Conf. 13.7, promoting adoption of personal effects exemptions for individuals and smaller groups of travelers. This policy was most recently adopted by the Swiss Customs Administration and announced in a July 2015 notice regarding travel with “Portable Musical Instruments.”<sup>3</sup> For larger musical ensembles transporting instruments by cargo, consideration should be given to potential permit and inspection exemptions for cargo that is traveling as “tools of the trade,” and under an ATA carnet. An ATA carnet is an existing document recognized by more than 80 countries that already assures that the material entering a country will depart that country without undergoing a commercial transaction. These policy changes would restore opportunities for international cultural exchange and enable extremely limited CITES enforcement resources to be re-directed to genuine threats to wildlife conservation.

- **Establish more efficient and uniform procedures across international CITES authorities.** Management authorities for CITES parties are not sufficiently prepared to issue multi-year musical instrument passports, and the process for inspecting material and credentialing CITES musical instrument certificates is uncertain. CITES countries are still in the process of fully adopting a musical instrument passport issuance process, and the procedures for qualifying for the three-year certificates are not clearly defined and are inconsistently applied. The definition of “non-commercial” as referenced in Resolution Conf. 16.8, is interpreted unevenly, and has been occasionally assumed to exclude transportation of musical instruments for use in performances by orchestras. At least one CITES management authority has also refused to issue single traveling exhibition permits for large traveling ensembles, instead requiring individual documents for each musician. Likewise, enforcement protocols at international ports of departure and entry are unclear, inconsistent, and unpredictable. U.S.-based musicians attempting to use U.S.-issued permits internationally are encountering confusion and delays that disrupt time-sensitive travel. The extremely limited designated U.S. port locations and hours of operations available for inspecting and credentialing permits are insufficient to support the volume of travel undertaken by professional musicians, students, and others participating in an array of international cultural activity. At present, only nine U.S. ports have inspectors available to process permits for musical instruments that contain both plant and animal material (e.g., stringed instruments containing Brazilian rosewood and ivory). Lengthy port inspection procedures on departure and

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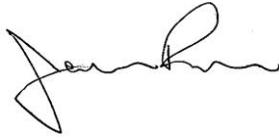
<sup>3</sup> [http://www.ezv.admin.ch/zollinfo\\_privat/04342/04343/04753/index.html?lang=en](http://www.ezv.admin.ch/zollinfo_privat/04342/04343/04753/index.html?lang=en)

arrival, for individuals and groups simply transporting musical instruments for use internationally, are an immense barrier to compliance with the underlying permit procedures. Musicians also require formal assurances that their fragile instruments will not be in harm's way when undergoing inspection and that instruments will be safe from damage or destruction if erroneously confiscated. CITES authorities should adopt formal procedures to pursue harmonizing musical instrument passport issuance and enforcement protocols across parties.

- **Establish a process for issuing clearer, public international guidance tailored for musicians preparing to come into compliance with existing CITES permitting rules and enforcement procedures.** Clear, species-designated public guidance regarding the many layers of CITES requirements simply is not available in a format easily accessible to musicians. Musicians and cultural institutions are struggling to assess and document the protected species content of musical instruments, which were legally crafted decades, and even centuries ago. Because these instruments were purchased, not for their protected species material, but for their unique artistic qualities, and considering a great many of them were crafted before CITES came into existence, very few instruments were accompanied by species-related documentation at the time of purchase. In most cases, it is impossible for musicians to produce original records confirming the material used in instruments, leaving them to pursue appraisals and expert affidavits, with no assurance as to whether such documentation will be acceptable. Some musicians unable to answer the threshold question as to whether the content of their musical instruments includes protected species material are obtaining permits out of necessary caution, raising their own burden, and raising the impact on permitting and enforcement authorities. Well-meaning foreign musicians attempting to comply with U.S. permit requirements have had their instruments detained because they unintentionally missed a step in the process or were unaware of the additional U.S. domestic rules for travel with instruments. The U.S. Fish and Wildlife Service has been very responsive to initial applications for three-year musical instrument passports and has provided exemplary public service, responding to inquiries quickly and comprehensively. However, the application forms for passports are still in ongoing testing and development in the U.S. and among other CITES parties. In the context of the 40-year history of CITES, under which rules related to musical instruments have gone largely unimplemented, the CITES musical instrument permit application procedures are still entirely new and not clearly communicated to musicians. Just as permit and enforcement procedures should be harmonized across CITES parties, so must uniform and understandable public guidance be developed that will enable musicians to come into compliance with evolving rules for international travel.

Thank you for the opportunity to provide initial comments on potential agenda items for consideration during CITES CoP17. The League of American Orchestras looks forward to continued engagement with the U.S. Fish and Wildlife Service on immediate and ongoing implementation of the musical instrument certificate, as well as pursuing opportunities for future international policy improvements that with both protect endangered species and facilitate international cultural activity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse Rosen', with a stylized flourish at the end.

Jesse Rosen  
President & CEO