

May 11, 2018

Public Comments Processing
U.S. Fish and Wildlife Service Headquarters
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

Submitted Via Internet: www.regulations.gov

Docket Number: FWS-HQ-IA-2017-0079

Re: Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; 18th Regular Meeting; Request for Information and Recommendations on Resolutions, Decisions, and Agenda Items for Consideration

We are pleased to submit this statement in response to the request by the U.S. Fish and Wildlife Service (83 FR 10736) for comments on resolutions, decisions, and agenda items that the United States might consider submitting for discussion at the 18th Conference of the Parties (CoP18) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). As representatives of musicians, performing arts presenters, instrument manufacturers, makers and retailers, and wood products importers and distributors in the United States and internationally, we appreciate the dialogue the U.S. government has facilitated in prior CITES proceedings regarding transportation and commerce with musical instruments, and we request that the agency take a strong leadership role in advancing urgently needed policy improvements at CoP18.

A great many musicians perform with legally crafted and legally purchased musical instruments that contain elephant ivory, tortoise shell, reptile skin, rosewood, and other materials subject to CITES controls. 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 bows for stringed instruments, and a variety of woods including rosewood have been used in the construction of stringed, percussion, and woodwind instruments. We support reasonable policy solutions that will ensure that international cultural activity and legal trade is supported while at the same time protections for endangered species are advanced.

Travel

We request that the U.S. seek outcomes at CoP18 that will advance CITES policies related to international travel with musical instruments containing protected species material. The process for traveling with musical instruments is in urgent need of improvement.

CITES policies regarding travel with musical instruments have a profound impact on the cultural and economic activity of musicians in the United States, and can significantly alter the environment for international cultural exchange. The international use of musical instruments by musicians and professional and student ensembles is essential to advance diplomacy, spark artistic innovation, and support vital international cultural activity. In partnership with CITES parties and the conservation community, music stakeholders have undertaken efforts to increase compliance with current permit requirements while simultaneously pursuing policy improvements that will alleviate unnecessary burdens.

The 16th Conference of the Parties (CoP16) adopted the U.S.-proposed Resolution Conf. 16.8 on *Frequent Cross-Border Non-Commercial Movements of Musical Instruments*, creating a multi-use Musical Instrument Certificate (MIC). The MIC streamlines the requirement for obtaining multiple CITES export permits when an instrument contains CITES material and is not exempted from permit requirements by an annotation or a personal effects exemption. Musicians using the MIC apply to their CITES Management Authority for issuance of single permit, which must then be credentialed by CITES enforcement officials at each port through which an instrument travels.

The 17th Conference of the Parties (CoP17), unanimously approved [Resolution Conf. 16.8 \(Rev. CoP17\)](#), which:

1. Clarifies that instruments loaned to musicians may qualify for CITES Musical Instrument Certificates.
2. Specifies that the non-commercial scope of the Musical Instrument Certificates includes using the permits when traveling for “paid or unpaid” performances.
3. Recommends that CITES countries not require permits when musicians are carrying certain instruments as personal effects.

We have been informed by individual musicians and performing ensembles that the required time and financial expense of obtaining and putting to use the MIC has left them no option but to forgo travel with their best musical instruments. This challenge was compounded by the listing of the *Dalbergia* genus in CITES Appendix II at the CoP17, which required a new wave of evaluation of significantly more musical instruments in order to assess, identify, and document each instrument’s rosewood components. While continued improvement and fine-tuning of existing permit procedures are appreciated, the most effective way to minimize the burden on the music sector is to remove from the permit process altogether for those activities that do not constitute a threat to the conservation of protected species.

1. CITES Parties should be reminded of provision of [Resolution Conf. 16.8 \(Rev. CoP17\)](#) related to instituting personal effects exemptions. Such exemptions are only applicable if acknowledged by all countries through which a musician must travel.
2. Allow permit exemptions for musical instruments transported by cargo under an ATA carnet – an internationally recognized customs re-export document.
3. Implement an electronic permit system.

Full recognition of the **personal effects exemption** would represent real relief for international guest soloists, small groups, and large ensemble musicians, greatly reduce the cost and time burdens related to navigating permit applications and enforcement procedures, and allow CITES authorities to dedicate limited resources to compliance and enforcement efforts that directly impact conservation goals. Nearly all orchestra musicians with CITES materials place their instruments in cargo shipments to avoid multiple, unwieldy permits in favor of a single permit and inspection procedure. If more musicians can carry instruments in cabin or as checked baggage without permits, they may practice and rehearse at their own discretion (shortly before departure and soon after landing), as well as have the ability to branch away from a tour for other solo and smaller ensemble work.

We also once again urge the U.S. to advance consideration of **permit exemptions for musical instruments transported by cargo under a carnet**. This step would allow legally crafted and legally purchased musical instruments to be transported through international ports without

undergoing burdensome permit and inspection procedures. ATA carnets are internationally recognized customs documents that require re-export within an allotted timeframe and waive duties and taxes. Given that the international use of musical instruments does not contribute to trafficking in endangered species, enabling larger musical ensembles to transport instruments by cargo and travel under an ATA carnet should be given consideration for potential permit and inspection exemptions.

As we await opportunities for exemptions from the permit process, we strongly encourage CITES parties to institute an **electronic permit system**. Electronic permitting would help to streamline and make more efficient the process of acquiring, using, and invalidating musical instrument certificates. Currently, musicians holding individual permits must void them before their instruments are included on a group permit. Given the narrow timeframe between engagements, this is impractical. An electronic system would help speed the permit issuance and invalidation process, while reducing the burden on enforcement authorities.

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.

As the U.S. initiated the creation of the Musical Instrument Certificate, it should lead an effort towards improvements in this area by proactively submitting a proposal to fully implement a “personal effects” exemption and provide exemptions for musical instruments transported by cargo under a carnet. 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.

Trade and Commerce in Wood Species

The decisions taken at CoP18 will include consideration of a crucial change to Annotation #15 pertaining to *Dalbergia* spp., *Guibourtia demeusei*, *Guibourtia pellegriniana*, and *Guibourtia tessmannii* (bubinga) ([Notification to the Parties No. 2016/063](#)). Proposals to revise Annotation #15 are currently under discussion by the intersessional Annotations Working Group established at the 69th meeting of the CITES Standing Committee. While we will submit more detailed comments on this topic in response to a future notice related to resolutions, decisions, and agenda items to be considered at CoP18, we are taking this opportunity to emphasize the harmful impact of the CoP17 adoption of Annotation #15, and to recommend U.S. leadership towards a resolution.

The music industry and those that supply wood product inputs to music instrument manufacturers strongly support efforts to conserve rosewood and bubinga as well as further study of their biology, conservation, and trade. Protecting these trees is a priority. As future species-listing proposals are offered, we urge USFWS make every effort to ensure – through its

leadership and engagement throughout CITES negotiations and policy formation – that listing proposals take into account and prevent potential unintended consequences for trade, allow appropriate timeframes for implementation, and can be supported through harmonized interpretations across CITES parties.

The making of musical instruments requires very limited quantities of rosewood and bubinga. For example, guitars, violins, violas, cellos, double basses, clarinets, piccolos, oboes, flutes, xylophones, and pianos that contain rosewood or bubinga typically contain substantially less than 10kg of the material. Marimbas and a small minority of pianos may contain larger quantities of the wood, but will usually not exceed 30kg per instrument. For certain instruments, such as those of the violin family, the use of rosewood is at the same time minimal and crucial, as it is the most suitable material, for instance, for tuning pegs. Instrument makers, retailers, and musicians rely on the production of and trade in instruments for their livelihoods and to produce art that uplifts the human experience. In aggregate, these instruments represent an extremely small proportion of the worldwide trade in rosewoods and bubinga.

Increases in the cost of materials and the administrative costs associated with compliance can greatly erode marginal profitability and threaten the livelihoods of instrument makers and related businesses (e.g., violin accessory makers). Musical instruments remain in use and are re-sold over a long period of time by both retailers and individuals, multiplying the cost and burden of permit issuance and enforcement. CITES permit compliance imposes a cascade of administrative and transportation costs on manufacturers, distributors, retailers and customers. For musicians, and particularly for orchestras and ensembles, limitations on travel and re-sale of instruments present a threat to livelihoods and artistic activity.

The absence of a clear and complete exemption for the commercial and non-commercial movement of musical instruments and parts presents a significant impact on the trade, hinders international cultural activity, and unnecessarily burdens CITES management authorities. If the Parties do not replace or substantially amend the Annotation #15 to address several critical issues, the world of music and culture will lose certain instruments that produce the highest quality tones, with no corresponding conservation benefit.

- **Musicians and instrument makers and other entities such as consignment retailers that assist in such sales are seeking a solution that will address both the commercial and noncommercial movement of instruments.** Given the long lifespan of musical instruments in use - decades, if not centuries - instruments are typically re-sold by their musician owners. Imposing permitting and documentation requirements on musicians and other entities for the transboundary resale of their instruments will hinder trade, contribute an unnecessary administrative burden, and potentially undermine the substantial investments (sometimes life savings) of musicians with no apparent accompanying conservation value.
- **Any new/revised annotation should be narrowly tailored to ensure that already limited administration and enforcement resources can be focused where they will have the greatest conservation benefit.** Any new/amended annotation must address the substantial increase in the volume of permits that Parties have had to process in the aftermath of the *Dalbergia* listing. For instance, the number of permits issued by the U.S. management authority roughly doubled from 2016 to 2017 as a result of Annotation #15 without a corresponding increase in budget or staff for administration and enforcement. The overburdening of management authorities is not helpful from the perspective of either trade or conservation. In addition, it is important to note these permits include multiple permits for the same piece of wood as it moves from

blanks to finished product and as that finished product moves from manufacturer, to distributor, to retailer, to the ultimate retail consumer.

- **Focus is best placed on trade from range states and not finished musical instruments.** CITES Parties implicitly recognized the conservation value of regulating trade from range states when they agreed on Annotation #10, for *Caesalpinia echinata* (also known as *Paubrasilia echinata* or Pernambuco), which covers "Logs, sawn wood, veneer sheets, including unfinished wood articles used for the fabrication of bows for stringed instruments." Similarly, CoP17 Proposal 55 (page 10) acknowledges that *D. melanoxyton*, commonly used for woodwinds, is usually exported in semi-processed forms.

Essential elements of any annotation for *Dalbergia* spp. and *Guibourtia* spp.:

- All trade in musical instruments and parts as defined by Chapter 92 of the Harmonized Tariff Schedule should be exempted from CITES permitting requirements.
- A revised annotation should exempt:
 - Commercial shipments of musical instruments and parts
 - Non-commercial shipments, including for performances, repair, and display in trade shows
 - Musical instruments as personal effects, hand-carried or shipped as cargo
- To the extent the existing Annotation #15 remains:
 - Delete the term "non-commercial"
 - Clarify its other terms of reference related to non-commercial activity, consolidated shipments, weight limits, and identification and marking requirements, as agreed in [CITES Notification 2017/078](#).
 - Accommodate all musical instruments
- Ensure consistency with current practices in customs, shipping, documentation, and declarations procedures.

Electronic Permitting

The U.S. should support continued development of a robust electronic permitting system such as eCITES that would eventually allow for universal utilization of electronic permits. If properly implemented, movement to electronic permitting would substantially reduce the time necessary for permit issuance and transmission, while reducing opportunities for fraud. U.S. companies that rely upon CITES documents for international shipments would also benefit from greater certainty that properly documented shipments would avoid costly delays due to questions about CITES documentation that could be transmitted well in advance of arrival at a foreign port of entry.

Expansion of U.S. Designated Ports

While this is not the subject of this Request for Comments, we are also hopeful that U.S. Fish and Wildlife will consider expanding the number of designated ports through which CITES goods can be processed. The doubling of permit processing caused by the recent rosewood listing has greatly expanded the logistical and administrative challenges our members face in complying with these new requirements. Allowing U.S. businesses and individuals to utilize additional ports is an important step in mitigating these challenges.

Thank you for the opportunity to provide comments on the resolutions, decisions, and agenda items that the United States might consider submitting for discussion at CoP18. We look forward to providing further comments as the CoP18 agenda is set, and as the U.S. shapes positions in response to proposals offered by CITES parties in the coming months. The music community is fully committed to the goals of wildlife conservation and combating illegal trade in ivory and other protected species. We appreciate the opportunity to partner with USFWS and the conservation community to seek reasonable solutions that protect the domestic and international use, production of, and trade in musical instruments.

Sincerely,

American Federation of Musicians of the United States and Canada
American Federation of Violin and Bow Makers
Chamber Music America
Fender Musical Instruments Corporation
ForestBased Solutions
International Association of Violin and Bow Makers
International Wood Products Association
League of American Orchestras
C.F. Martin & Co., Inc.
National Association of Music Merchants
OPERA America
Paul Reed Smith Guitars
Performing Arts Alliance
The Recording Academy
Taylor Guitars
Theatre Communications Group