

Written Testimony for the Record

Submitted to the House Committee on Natural Resources

Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs

Oversight Hearing on "The U.S. Fish and Wildlife Service's Plan to Implement a Ban on the Commercial Trade in Elephant Ivory"

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Submitted by

Jesse Rosen, President and CEO, League of American Orchestras

and

Bruce Ridge, Chair, International Conference of Symphony and Opera Musicians

The League of American Orchestras, founded in 1942, and chartered by Congress in 1962, is the national arts service organization of approximately 800 orchestras across the United States – all 501(c)(3) nonprofit charitable organizations – representing thousands of administrators and musicians working daily to deliver orchestral music to audiences worldwide. The International Conference of Symphony and Opera Musicians (ICSOM), founded in 1962, represents over 4,000 musicians from 52 major symphony orchestras throughout the United States, with the mission to promote a better and more rewarding livelihood for the skilled orchestral performer and to enrich the cultural life of our society. Our organizations are also active participants in the wider international cultural exchange community, partnering with The Recording Academy, Chamber Music America, the American Federation of Violin and Bow Makers, the National Association of Music Merchants, and the Performing Arts Alliance.

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 the communities in which they live. International artists from beyond our country's borders are frequently invited to perform for U.S. audiences - alongside U.S. musicians - 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 attain 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 small amounts of elephant ivory. Ivory may be found in an array of string, wind, percussion, and brass instruments. The policies recently adopted and soon to be proposed by the U.S. Fish and Wildlife Service regarding the travel and sales rules for musical instruments will have a profound impact on the cultural vibrancy and economic activity of musicians in the United States, and will significantly alter the environment for international cultural activity.

We appreciate this opportunity to go on record related to the impact of recent proposals to ban commercial activity related to African elephant ivory. In addition to concerns related to anticipated upcoming regulatory action to limit future sales of existing musical instruments, we offer comments here regarding the immediate impact of new policies now in place that limit international travel with these musical instruments.

The music community is fully committed to the goals of wildlife conservation and combatting illegal trade in ivory and other protected species. Following the issuance of the February 25, 2014 U.S. Fish and Wildlife Service Director's Order 210, we have been informing musicians of the threat to African elephant populations, 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 small amounts of African elephant ivory and other protected species material. While we are grateful for the expansion of instruments eligible for travel under the revised Director's Order issued on May 15, serious barriers to international cultural activities remain.

A reliable system has not been built to support travel with Convention on International Trade in Endangered Species (CITES) permits. Musicians that conclude a permit is required encounter an array of obstacles when attempting to simply travel to use the tools of their trade.

- Clear, species-specific public guidance regarding the many layers of CITES and domestic requirements in the United States and internationally simply is not available in a format easily accessible to musicians. Musicians and cultural institutions are struggling to assess and document the endangered 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-specific 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. While the U.S. Fish and Wildlife Service has publicly stated that it can use visual inspection to distinguish African elephant ivory from other, non-protected material found in musical instrument parts as small as the tip of a bow, musicians have a high degree of fear that even contemporary instruments made with non-protected material are currently at risk of confiscation.
- The required U.S. permit application procedures are entirely new and not clearly communicated to musicians. Over the past four months, the U.S. Fish and Wildlife Service has been very responsive to the small number of 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 were not complete, leaving orchestra applicants, for instance, to retrofit existing forms intended for use by "circuses and traveling animal exhibitions." A new form for applying for three-year permits has only just been completed in the U.S., and the process for using it is as-yet untested. It is unclear whether U.S. Fish and Wildlife will have the capacity to process the potential volume

of permit applications it would receive under a fully implemented permit system.

- 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 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.
- International CITES authorities are not sufficiently prepared to issue multi-year musical instrument passports, and the process for recognizing U.S.-issued documents is uncertain. European CITES countries, for instance are taking the time required to fully consider the impact on their stakeholders before implementing a musical instrument passport process. U.S.-based musicians attempting to use U.S.-issued permits internationally are encountering confusion and delays that disrupt time-sensitive travel.
- In addition to the inconsistencies related to international CITES permit procedures, the lack of clarity regarding the added U.S. domestic rules for traveling with endangered species material presents insurmountable obstacles for many international artists attempting to travel to perform for audiences in the U.S. and alongside U.S. musicians. Well-meaning foreign musicians attempting to comply with 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.

Our organizations will continue to inform musicians of the rules for travel with musical instruments, and we will partner with our colleagues in the instrument-making community to help musicians better identify and document the material contained in their musical instruments. We believe that conservation goals and international cultural activity will be more fully supported when the U.S. takes the following additional actions:

- Immediately issue clearer guidance tailored for musicians preparing to come into compliance with existing CITES and domestic permitting rules and enforcement procedures.
- Fully coordinate implementation and enforcement procedures among the Transportation Security Administration, Department of Homeland Security, U.S. Department of Agriculture, and U.S. Fish and Wildlife Service to streamline treatment of musical instruments.
- Communicate with international CITES authorities to pursue harmonizing U.S. musical instrument passport procedures with international permitting and enforcement protocols wherever possible.
- Remove the limitation on entering or re-entering the U.S. with musical instruments purchased after February 25, 2014, which contain African elephant ivory.

- Implement a “personal effects” exemption that would allow legally crafted and legally purchased musical instruments to be transported through non-designated ports without undergoing lengthy inspection procedures. This policy change would restore opportunities for international cultural exchange and enable extremely limited enforcement resources to be re-directed to genuine threats to wildlife conservation.

The U.S. Fish and Wildlife Service’s “Ivory Ban Questions and Answers” includes the following statement (emphasis added).

Why is the Service allowing limited imports for non-commercial purposes to continue, but restricting the commercial importation of antiques made from African elephant ivory?

The United States is a market for objects made from African elephant ivory, which drives increasing poaching of wild elephants. The Service has determined that it must take every administrative and regulatory action to cut off import of raw and worked elephant ivory where that importation is for commercial purposes. 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 use of musical instruments does not contribute to trafficking in poached African elephant ivory, we firmly believe that policies that protect the future use of musical instruments should be expanded. We submit the attached document, *Protecting the Use and Ensuring the Preservation of Musical Instruments*, as supporting material, which includes comprehensive facts about the limited, historic use of ivory in musical instruments. Notably, the document demonstrates that there is not a demand for new ivory in the use of crafting new musical instruments.

In partnership with the broader music community, we will be engaged in ongoing opportunities for public comment, and will participate in future federal rule-making procedures related to travel with musical instruments - and domestic sales of instruments - to seek opportunities for future generations of musicians to have access to existing, culturally significant instruments of unparalleled quality. We thank the Committee for this opportunity to seek urgently needed near-term solutions that meet conservation goals while supporting international cultural activity.

Respectfully submitted,

Jesse Rosen
President and CEO
League of American Orchestras

Bruce Ridge
Chair
International Conference of Symphony and
Opera Musicians

Protecting the Use and Ensuring the Preservation of Musical Instruments

The undersigned organizations urge Congress and the Administration to take the following steps to protect international and domestic cultural activity while supporting essential endangered species conservation efforts:

- Restore opportunities for international travel with legally crafted, legally purchased musical instruments that contain endangered species material.
- Maintain the legal sale of existing, legally crafted musical instruments that contain small amounts of African elephant ivory.
- Support African elephant conservation by focusing U.S. enforcement resources on efforts that genuinely combat illegal trade and trafficking in African elephant ivory, rather than banning travel with and sale of legally crafted and legally purchased musical instruments.

As part of a broader effort to combat illegal trade in African elephant ivory, the U.S. Fish and Wildlife Service (USFWS) has ordered sweeping enforcement procedures related to the Endangered Species Act and the African Elephant Conservation Act and is drafting new regulatory limitations. Thousands of musicians use musical instruments containing small amounts of African elephant ivory that were legally crafted decades ago and legally purchased – not for their ivory content, but for their impeccable sound and artistic value. The new USFWS measures have severe consequences on international and domestic cultural activity.

On February 25, 2014, new strict limits immediately took effect for international travel with instruments that contain African elephant ivory, preventing travel with instruments that were legally purchased after 1973. In response to urgent appeals from the music community, USFWS revised Director's Order 210 on May 15, 2014, saying that noncommercial movement of musical instruments "do(es) not contribute to poaching or illegal trade." However, the revised Order still prohibits traveling musicians from returning to the U.S with instruments legally purchased after February 25, 2014 and heightens implementation of international permit requirements that are nearly impossible to navigate.

USFWS will next issue proposed regulations that will also effectively ban domestic sales of existing, legally crafted instruments that contain African elephant ivory.

The new and forthcoming rules will unfairly render many musical instruments that were legally made, bought, and sold impossible to use internationally, illegal to resell, and effectively valueless in their existing condition. The majority of these instruments are irreplaceable culturally and artistically, and they are essential to a musician's sound. Ivory has generally not been used for decades to create new musical instruments. USFWS has not explained how the commercial sale of existing musical instruments contributes to elephant poaching and the illegal trafficking in ivory.

The music community is fully committed to the goals of wildlife conservation and combatting illegal trade in ivory and other protected species. We are asking the Administration to use its regulatory authority and enforcement discretion to craft a reasonable solution that protects the domestic and international use of musicians' tools of their trade, and preserves historical and legally made instruments now and for future generations to come.

Alternate ROOTS
American Federation of Musicians of the
United States and Canada
American Federation of Violin and Bow
Makers
Association of Performing Arts Presenters
Chamber Music America
Dance/USA
Fractured Atlas
International Conference of Symphony and
Opera Musicians (ICSOM)

League of American Orchestras
National Alliance for Musical Theatre
National Association of Music Merchants
National Performance Network
OPERA America
Performing Arts Alliance
The Recording Academy
Theatre Communications Group
Violin Society of America

Facts about Ivory in Musical Instruments

Many musicians perform with instruments crafted decades, and even centuries, ago that contain small amounts of African elephant ivory. Most frequently found in bows and acoustic guitars, ivory may also be found in other string instruments, wind instruments, keyboards, brass, and certain percussion instruments.

There is today no market for unworked or raw African elephant ivory within the musical community. Bow makers and other artisans stopped using elephant ivory decades ago. The trade and use of musical instruments is not a source of illegal trafficking in elephant ivory.

The use and re-sale of instruments does not increase demand for ivory products or drive ivory value. Instruments are not purchased for their ivory content, but rather for their impeccable overall quality and tonal attributes that enable their owners to perform to their very best abilities. Unlike many other commodities, musical instruments are hand crafted and unique; no two are exactly alike in the way that they feel and sound. This helps account for their high cultural and historical value.

Ivory material is not easily replaced without risk of irreparable damage to the instruments. Attempts at re-tipping bows, for instance, can result in the loss of historical bow wood and the bow's unique balance and artistic quality. The art and tradition of instrument making, part of our cultural heritage, will be undermined if antique and pre-act ivory are removed from bow tips and guitars in a blanket and indiscriminate manner to comply with the new and forthcoming rules. The preservation of these historical instruments is essential to the study of the art of crafting instruments, now and in the future.

These instruments are essential tools of the trade. Because instruments are hand-crafted and uniquely matched to the performance needs of musicians, they are very often quite expensive and represent substantial personal investments for musicians. Most musicians do not have suitable substitute instruments for use in place of instruments that contain ivory.

The use, preservation, and sale of instruments are inextricably bound. The vast majority of musicians, artisans, and dealers are individuals or small businesses. Museums, institutions, and other collectors, public and private, will no longer be able to acquire instruments, impoverishing U.S. collections, which culturally enrich the public. All depend on the ability to transfer instruments. If instruments cannot be sold, music as we know it will not survive and musical collections, which provide the basis for learning, will be frozen in place.

Facts about Travel with Instruments

Under the original February 25, 2014 Director's Order 210 [Administrative Actions to Strengthen U.S. Trade Controls for Elephant Ivory, Rhinoceros Horn, and Parts and Products of Other Species Listed Under the Endangered Species Act (ESA)], instruments containing African elephant ivory were not allowed to enter the U.S. if the instruments had been purchased after February 26, 1976. In response to urgent appeals from the music community, USFWS amended Director's Order 210 on May 5, 2014 to slightly ease the restrictions on musical instruments.

Under the latest version of the rules, a musical instrument that contains African elephant ivory may only be brought into the U.S. if the instrument meets *all* of the following criteria: the African elephant ivory contained in the instrument was legally acquired prior to February 26, 1976; the instrument has not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014; the person or group traveling with the instrument qualifies for a CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) musical instrument certificate; and the musical instrument containing African elephant ivory is accompanied by a valid CITES musical instrument certificate or an equivalent CITES document. These limitations apply to musical instruments that contain either antique or newer ivory.

While widening the scope of instruments eligible for travel across U.S. borders is a step in the right direction, many serious questions and concerns remain. It is unclear at this time what documentation will be sufficient to prove that an instrument was purchased prior to February 25, 2014 or that the ivory in the instrument was acquired prior to February 26, 1976. Instruments legally purchased after early 2014 that contain African elephant ivory will be banned from entering the U.S., even if the instruments are entering the U.S. purely for personal or professional use.

A reliable system has not been built for obtaining CITES passports and navigating complicated enforcement procedures at U.S. ports of entry and departure, and across the globe. The costs, uncertainty, and risks associated with attempting to travel with permits are a barrier to international cultural activity. While rules requiring permits for travel with instruments have existed for nearly 40 years, they have never been widely implemented, and a complete structure has not been put into place to facilitate compliance.

The permit process, customs enforcement procedures, and rules for compliance with the ban are opaque and incomplete, creating a high risk of erroneous seizure and forfeiture of musical instruments. African elephant ivory used in older instruments can be very difficult to distinguish from mammoth or non-endangered ivory types. The CITES musical instrument passport concept is new and the permit procedures are not yet fully developed. Only nine U.S. ports are available for travel with instruments that contain ivory and protected wood species. The use of U.S. permits in foreign countries is untested. Innocent mistakes at Customs will result in the disproportionate penalty of forfeiture. Immediate solutions are needed to avoid erroneous, potentially destructive, and professionally crippling seizures of instruments.

These travel limitations put the livelihood and international reputation of musicians at risk. International artists perform for U.S. audiences, U.S. musicians tour internationally to perform across the globe, and individual amateur and professional musicians frequently travel abroad to perform as soloists and smaller ensemble members. International performances have been planned years and months in advance of the new travel rules. It is simply impossible for musicians to fulfill their engagements without their instruments.

Current and emerging rules related to travel with instruments that contain endangered species material are not clearly or effectively communicated by U.S. authorities to the vastly diverse communities of U.S. and foreign artists that travel across borders. There is no one-stop federal resource to communicate new orders and rules, leaving musicians not institutionally connected at risk of becoming unfairly ensnared in customs enforcement. Tens of thousands of musicians with unique cultural backgrounds residing in the United States, and those who live in diverse American communities and perform as professional and semiprofessional musicians, run a great risk of never hearing about new rules. The unmet need for mass communication and distribution of new rules, along with instructions particularly in non-English languages, presents a particular threat to artists in these diverse communities.

Instrument and bow makers who travel internationally with instruments simply to exhibit them or for educational purposes, and without intention to sell them, could find their instruments and bows subject to seizure simply because they otherwise engage in commercial activity by profession.

If musical instruments are confiscated and/or destroyed, significant financial hardship may ensue. Such seizures could very well spell the end of employment and make it impossible for musicians to participate in opportunities within artistic cultural centers, clubs, and educational training organizations.

Conservation goals will be better supported by focusing U.S. enforcement resources on the root of the elephant ivory trafficking problem, not on legal international cultural activity undertaken by musicians. Members of the Advisory Council on Wildlife Trafficking publicly stated on March 20, 2014 their intent to focus on the “bad guys” fueling and fulfilling demand for new ivory products. Musicians, bow makers and restorers, and institutions and private collectors of historical and legally made bows are not contributing in any way to increased demand for illegally traded ivory.

Facts about the Production, Sale, and Re-Sale of Instruments Containing Ivory

The music community is not seeking to craft new instruments using African elephant ivory. After the 1976 CITES listing of African elephant ivory, and the 1989 implementation of the African Elephant Conservation Act, U.S. bow makers and restorers, guitar makers, and piano manufacturers in the United States stopped using elephant ivory and turned to mammoth ivory and other non-endangered material as a plentiful substitute.

These instruments were legally crafted decades ago. Until the CITES listing of African elephant ivory in 1976, hundreds of thousands of handmade bows, acoustic guitars, and other instruments produced over many decades, and even centuries, were made with small amounts of ivory. For example, violin bows often contain a thin ivory tip, with dimensions of approximately .6 millimeters x 10 millimeters x 23 millimeters. An average bow tip weighed .2-.25 grams and required 1 gram of unfinished ivory. In 1970, when trade in elephant ivory was legal, an average elephant tusk weighed 26 pounds, meaning that ivory from one elephant could have produced over 23,000 bow tips. The head of the bow was designed around the physical properties of the ivory tip, which gives the delicate bow head protection, strength, and proper balance. Many acoustic guitars used small amounts of ivory as saddles or nuts, typically amounting to no more than 1% of the instrument's weight.

Existing instruments that were legally crafted, sold, and purchased should remain in use. Although elephant ivory has not been used in the making of new instruments in decades, tens of thousands of instruments containing small amounts of elephant ivory are today being played and carried throughout the United States and the world by professional, amateur, and student musicians. These instruments should be available to future generations of musicians as well as instrument makers, who look to historical examples as essential educational references for their work.

It will be extremely difficult for many vintage instruments to be designated as antiques eligible for an exemption under the proposed rules. In order to qualify as an antique eligible for import, export, and interstate sale, an instrument must not only be 100 years old, but must have entered the U.S. via one of 13 authorized ports, even though such designated ports did not exist until 1982. Even if the port-entry requirement is relaxed in the proposed regulations, other problems remain. Instruments that have been repaired or modified with any endangered species since 1973 are also not eligible for designation as antiques. Otherwise qualifying antiques also will not be eligible for exemption if purchased after February 25, 1976. Non-antique vintage instruments would be banned from import and domestic sale under the USFWS proposal.