

February 5, 2015

Howard Shelanski
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St. NW
Washington, DC 20006

Dear Administrator Shelanski,

Our organizations collectively represent millions of Americans who care deeply about the impact of Federal policies on wildlife and ecosystems. We understand that the Office of Information and Regulatory Affairs (OIRA) is currently reviewing a proposed rule by the US Fish & Wildlife Service (FWS) that would restrict trade in African elephant ivory and other related products. We are writing to urge OIRA to expedite this process. The reason for this request is simple: African elephants face an historic crisis, and without swift action on the part of the US government, we face the very real possibility of regional extinctions within the next decade. We support a thorough analysis of the domestic impact of the proposal by the Office of Management and Budget, but also know that accelerating this process could literally mean the difference between life and death for thousands or even tens of thousands of these iconic animals.

It is hard to overstate the magnitude of this emergency. Researchers estimate that as few as 420,000 African elephants remain in the wild. According to the best available science, poachers killed more than 100,000 African elephants between 2010 and 2012, and preliminary data for 2013 shows a continuation of that trend. Illegal killing (for their valuable ivory tusks) far outstrips replacement rates for this slow-reproducing species, and some experts believe that elephants will be extinguished from many areas of their current range within a decade.

This devastating trade has a tremendous human cost. The high price of ivory has made the illegal trade a lucrative business for transnational criminal organizations. Traffickers support a broad group of corrupt officials across Africa, which promotes political instability and discourages the rule of law. There is growing evidence that the ivory black market is a viable source for funding military resistance groups such as the Janjaweed militia in Sudan and the Lord's Resistance Army in Uganda, who have been accused of numerous human rights violations.

The root of the problem is complex. One aspect is the tremendous increase in demand for ivory in China and other Asian countries, as well as sustained demand from the United States. Only by addressing the trafficking in ivory and the demand for these products will there be any hope of a long-term recovery of the species.

In the United States, the Administration has focused on wildlife trafficking as a priority issue, using ivory as a launching pad for further reforms and action. The United States remains a significant market for ivory, and analysis of US Customs data on ivory seizures (along with recent arrests in the United States of large-scale ivory traffickers) makes it clear that the US is also a destination for smuggled ivory shipments.

Until recently, law enforcement officials did not have a clear mandate to regulate domestic ivory sales, nor did they have the system in place to do so. Our porous borders, coupled with existing and undocumented ivory for sale, made it nearly impossible in practice for officials to distinguish legal from illegal ivory sales. The rules before OIRA are the latest in a series of regulatory changes made by the FWS, which together have the potential to shut down the vast majority of American involvement in the illegal ivory trade, and which, in turn, could influence other consumer countries to strengthen their domestic controls.

The scientific and conservation communities have expressed overwhelming support for the Administration's actions to date, and look forward to weighing in during the upcoming public comment process for this new element. We understand there to be two elements to the proposal currently before OIRA: a restriction on interstate commercial sale of ivory; and a restriction on trophy tusk imports. As OIRA examines the economic impact of these changes, along with the direct costs and benefits of implementing the new rules, and other factors, we urge you to consider three things:

1. First, OIRA's analysis should be confined to the impacts of the specific FWS proposal currently under consideration. For example, the FWS has already finalized regulations pertaining to CITES "use after import" restrictions which require sellers to provide documentation showing that African elephant ivory products were lawfully imported prior to 1990 [79 Fed. Reg. 30,399 (May 27, 2014)]. This text states: "If you [the seller] are unable to clearly demonstrate that this exception applies, the specimen may be used only for noncommercial purposes." [*Id.* at 30,427.] As this past action has already been fully reviewed and finalized per US law, we do not believe that it should be considered in the current analysis. Similarly, any changes already established by FWS Director's Order #210 (issued in February 2014 and amended in May) that are not specifically included in the current proposal under review should not be a subject of the current analysis.
2. Second, and similarly, several states have already established strong restrictions on the ivory trade within their jurisdictions or are considering doing so in the near future. New Jersey, for example, recently banned all intrastate commercial trade in ivory products, while New York banned most intrastate sales (while exempting some antiques and other items); both of these states are considered to be among the bigger ivory markets in the US. Clearly, commercial activities already prohibited under state law should not be factored into a nationwide analysis, and your agency's review should take these restrictions into account.
3. Third, as OMB considers the need for recommending changes to the FWS proposal to mitigate potential economic impacts, we would note that the fact of prior legality does not establish the right to sale *ad infinitum*. Trade in African elephant products is sanctioned under section 4(d) of the Endangered Species Act, which states: "Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife [...]"[16 U.S.C. § 1533(d)]. The purchase of wildlife products is an investment risk like any other, and the ESA clearly establishes this risk by granting Interior the ability to change trade exceptions under the 4(d) rule.

The second element of the FWS proposal pertains to the import of sport-hunted trophy tusks. It is our understanding that the FWS has proposed to limit such imports to two trophies (4 tusks) per hunter per year. Under existing law, trophy tusks may be imported for noncommercial use only. Given that most trophy hunting expenditures accrue to foreign entities (safari operators, foreign government agencies, etc.), it is unclear how this revision would have a significant domestic economic impact. We simply ask that OMB limit its review of this section to financial impacts that are clearly domestic in nature, and to note that only a small minority of trophy hunters (namely, those who plan to kill more than two African elephants per year) will be adversely affected by the limitation.

OMB's review should also account for the savings and efficiencies gained by a clear system for law enforcement officials, FWS permitting officials, and other beneficiaries.

As noted earlier, there is growing evidence that some African extremist groups and international criminal syndicates are major traffickers of illegal ivory. By taking steps to regulate our domestic markets, the US will undermine the ability of these groups to destabilize the region and counter US interests. The proposed rule before OIRA would help curb this trade. It has sweeping conservation implications, with growing trafficking in ivory and demand for tusks driving an historic crisis for African elephants. Moreover, the proposed rule is in line with the National Strategy for Combating Wildlife Trafficking, issued by the Administration in 2014. Thus, we urge OIRA to perform a swift review of this rule.

Thank you for your consideration. Please feel free to reach out to us if you have any questions.

Sincerely,

Beth Allgood
Campaigns Director
International Fund for Animal Welfare

Tracie Letterman
Director of Regulatory Affairs
Humane Society of the United States

Adam M. Roberts
CEO
Born Free USA

Andrew Wetzler
Director, Land & Wildlife Program
Natural Resources Defense Council

Kelly Keenan Aylward
Washington Office Director
Wildlife Conservation Society