

**Comments on the "Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*)"**

Daniel Stiles, Ph.D.  
Member, IUCN/SSC African Elephant Specialist Group  
U.S. citizen

I am greatly concerned by the increase in elephant poaching that has occurred beginning in about 2007 reported by the CITES MIKE and ETIS programs, which were competently summarized in the proposed revision to rule 4(d) document (On page 45157, you might want to add data contained in *Update on elephant poaching trends in Africa to 31 December 2014* [http://cites.org/sites/default/files/i/news/2015/WWD-PR-Annex\\_MIKE\\_trend\\_update\\_2014\\_new.pdf](http://cites.org/sites/default/files/i/news/2015/WWD-PR-Annex_MIKE_trend_update_2014_new.pdf)).

I am pleased that the U.S. government and particularly the FWS have also shown serious concern and have demonstrated a commitment to address the menace that illegal ivory trade poses to the future of elephants.

Extracts of my research and that of my collaborator Esmond Martin have been presented in the background discussion of the FWS document. To summarize, I am the co-author or author of publications beginning in 2000 relating to ivory trade in the U.S. and elsewhere, including the *The Ivory Markets of Africa*, *The Ivory Markets of East Asia*, *Ivory Markets in the USA*, *An Assessment of the Illegal Ivory Trade in Viet Nam*, *The Elephant and Ivory Trade in Thailand*, *Elephants in the Dust – The African Elephant Poaching Crisis*, “It’s not just China: New York is gateway for illegal ivory”, and *Elephant Ivory Trafficking in California*, to name but a few.

I have carried out ivory trade investigations with funding from Save the Elephants, HSUS, Born Free Foundation, Care for the Wild International, TRAFFIC, IUCN/CITES-MIKE, UNEP, and most recently by the Wildlife Conservation Society, China office, and Vulcan, Inc. in Washington State.

I oppose illegal ivory trade in the strongest terms and condemn the elephant poaching that supplies demand in Asia and elsewhere. But my in-depth research and understanding of how and why elephant poaching for ivory is motivated and driven has led me to believe that a “prohibitionist” approach is the wrong one. Banning the trade in a commodity for which consumer and investor demand exists not only is NO solution, it can in fact exacerbate the problem. This has certainly been the case for elephant ivory.

On p. 45158 the FWS document states: “Demand for ivory is driving the current poaching crisis. Although the primary markets are in Asia, particularly in China and Thailand, the United States continues to play a role as a destination and transit country for illegally traded elephant ivory” – While this statement is true, it is misleading. I recently concluded a study for WCS-China on ivory demand drivers in

China. Assisted by sub-contractors, we concluded that evidence was overwhelming that the increase in elephant poaching beginning in about 2007 was caused by East Asian speculator demand for raw ivory, not by consumer demand for worked ivory. There are well over 2,000 *tons* of illegal raw ivory (poached + leaked from stores) unaccounted for since 2002, not seen in ivory outlets selling worked ivory. We believe much of it is stored by speculators who believe that increasing scarcity will continue to drive prices higher. Restricting trade of ivory in the U.S. will have no effect on addressing this problem.

Demand for recently poached ivory in the U.S. as recounted in the cases described on pages 45158-9 can be adequately addressed by pre-2014 existing law, as the successful prosecutions demonstrate. It is difficult to see how the proposals for more stringent controls that will adversely affect those owning and wishing to trade legal ivory will increase protection of elephants in Africa. If anything, it will divert law enforcement effort away from the type of large cases described on pages 45158-9 towards chasing collectors wanting to trade chess sets and netsukes (almost all of which are made on pre-1990 ivory, but which are not antiques as defined by the ESA).

There is currently no demand for new poached raw ivory in the U.S. I carried out another consultancy for Vulcan Inc. recently that found that there is a glut of estate raw tusks that sell for prices about 10-15% of those that can be obtained in China. No informed ivory trafficker would try to smuggle tusks into the U.S. It would make much more sense to smuggle them out. Research I carried out with the television channel ABC in 2013 in New York and for NRDC in California in 2014 found that the worked ivory markets were down in scale considerably since the 2006-2007 Martin & Stiles USA survey. The relative importance of the USA as a destination for illegal ivory has been greatly exaggerated.

I would like to dispel the false claim that the U.S. is the second largest market for illegal ivory consumption in the world – repeated in NGO campaigns and media stories constantly. It can be traced to Martin and Stiles' U.S. ivory report in 2008, co-authored by this commenter.

On page 111 of the Martin & Stiles report, there is a table in which the U.S. ranks second behind China/Hong Kong, based on the number of ivory items seen in retail outlets. The table says nothing about whether the items are legal or illegal.

On the same page, the authors state: "The USA most likely ranks second in scale after China (including Hong Kong) in the size of its ivory market at the global level, followed by Thailand in third place." Again, this statement says nothing about the legal/illegal market distinction.

It is important to note also that in the same report, the authors state:

- "The survey found 24,004 ivory items in the 657 outlets in the 16 towns and cities

visited in the USA, most of which probably *were legally for sale*."

- "Relative to the size of the USA's population and economy, little raw ivory enters the country legally or illegally (based on seizures). From this perspective, *the U.S. ivory market does not appear a significant threat to elephant populations*."

It is interesting that any time you see the false notion in someone's report, it does not cite a source (most recently in the *New York Times* [http://www.nytimes.com/2015/07/26/world/africa/obama-administration-targets-trade-in-african-elephant-ivory.html?\\_r=1](http://www.nytimes.com/2015/07/26/world/africa/obama-administration-targets-trade-in-african-elephant-ivory.html?_r=1)).

The Martin & Stiles 2008 report stated on p. 9: "The age of items was assessed based on signs of wear, style, price and information provided by vendors. This method is hardly infallible. Breakdowns into estimated pre- and post-1989 ages of manufacture are accompanied by the qualifier 'could have been'. This means that the style, condition and price of the item were consistent with either a recently-made piece (post-1989) or a pre-1989 piece. Even if we judged an item to be possibly made before 1989, this in no way attests to its legal status."

The Stiles 2015 California ivory report stated: "Determining the date of manufacture and/or import of each item into the United States is fraught with difficulty and the methodology employed in the type of study carried out here is subjective... The results reported here should not be considered as absolute, but rather a rough estimate."

In addition, there are tons of legal raw ivory in the U.S. from which recent items can be carved. Even items manufactured in 2015 can be legal if made from old ivory, and such items exist.

Given these caveats, no conclusions should be drawn about what percentage of ivory in the USA is legal or illegal based on visual examination. To state that "up to 90% of ivory seen in California was illegal" is just as likely the case as stating that "up to 90% of ivory seen in California was legal".

FWS stated on p. 45162, "Stiles estimated, in his 2014 follow-up study, that as much as one half of the ivory for sale in two California cities during his survey had been imported illegally. All of this demonstrates the need to impose restrictions on commercializing elephant ivory within the United States."

The report in question said nothing about "imported illegally". The report actually stated on p. 15 that "There is a much higher incidence of what appears to be ivory of recent manufacture in California, roughly doubling from approximately 25% in 2006 to about half in 2014" and in the Conclusions, "the proportion of possibly illegal ivory has increased by 25% to half of all ivory in the two cities surveyed."

As stated above, even ivory manufactured in 2015 can be legal if it was made from a

legal piece of raw ivory. The age of manufacture of an ivory item says nothing about its legality. What matters is the date and manner of import. You can say little about that by looking at a piece of ivory.

Another important fact not included in NGO and media reports, or in the proposed rule "Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*)," is the finding Stiles made in Manhattan, New York, in 2013 and in California in 2014 that the quantities of ivory and outlets seen selling ivory had declined substantially since 2006-2007 when the first survey was carried out. This strongly suggests that consumer demand is down and less illegal ivory has recently been entering the U.S.

That said, there is illegal ivory entering the U.S., as demonstrated by the number of cases and prosecutions described in the document, and by research I carried out in recent years. I would argue that the law that existed prior to February 2014 is adequate to address the problem of illegally imported ivory. The proposed changes would have little or no effect on the way the vast majority of illegal ivory enters the U.S. or is traded interstate. It is smuggled in labeled as mammoth ivory, bone or other raw material, or hidden in something.

Denying antiques legal importation will not address the smuggling problem. The revised rule 4(d) permits interstate trade in antiques, so if antiques are smuggled in (genuine or fake ones), they can enter the trade system, as they do today. I calculated that even if every single antique that entered the U.S. legally, as reported in the CITES Trade Database, were fake, the ivory to make them could be supplied by about 10 elephants a year. Measure this against the more than 5,000 businesses in Table 2 and the tens of thousands of Americans that currently engage in buying and selling legal antique items that would be affected by the rule change. And, of course, not all legally imported antiques are fakes made from poached elephant ivory. Only a very small percentage would be. Antiques with CITES permits are not the problem.

It is evident that 'laundering' is a primary concern of FWS and the revised rules are meant to address this perceived problem: "Improved domestic controls will make it more difficult to launder illegal elephant ivory through U.S. markets, which will contribute to a reduction in poaching of African elephants". But can the USFWS give one other example of where legal specimens of the target commodity are prohibited in order to prevent laundering of illegal specimens? Should all paper currency, genuine designer clothes, DVD movies and so on be banned because illegal forms of them exist?

If the U.S. government and civic organizations and individuals are serious about addressing the elephant poaching crisis, they should not divert human and financial resources away from the real problem. Introducing the proposed new restrictions on commercial uses of ivory will not make it simpler to control trade in elephant ivory. Litigation will no doubt ensue on several grounds, wasting everyone's time and

money.

For example, it is highly debatable that antique ivory can be prohibited import under the AfECA as the FWS maintains. The AfECA allows the import of worked ivory from a country that certifies that the source of the ivory is legal and was exported in accordance with its laws. The ESA allows the import of antique ivory legally sourced. On what legal grounds are *all* antiques being denied import? If the exporting country asserts the antique is legal, it would appear that it would be legal to import into the U.S.

It seems to me a huge waste to be fighting this battle with mostly law-abiding American citizens when Chinese speculators are buying tons of poached ivory every year representing the slaughter of 20,000-30,000 elephants annually. And why are the speculators doing this? Because those who wish to prohibit legal ivory trade are creating the conditions for speculators to cash in. They are cutting off legal supply, creating artificial scarcity, before making the effort to create appropriate conditions in which it would make sense to cut off supply.

I would strongly urge the FWS and the Advisory Council on Wildlife Trafficking to devote its energies and resources to solving the real problem that is annihilating elephant populations in Africa – speculator demand for raw ivory in eastern Asia.

## References

Martin, E. and Stiles, D. (2008). *Ivory Markets in the USA*. London and Nairobi: Care for the Wild International and Save the Elephants.

<http://danstiles.org/publications/ivory/16.2008%20USA%20copy.pdf>

Stiles, D. (2013). The big ivory apple. *Natural History* July-August: 10-13.

<http://danstiles.org/publications/ivory/34.NH%20NY%20ivory.pdf>

Stiles, D. (2015). *Elephant Ivory Trafficking in California, USA*. Washington, D.C.: NRDC.

<http://danstiles.org/publications/ivory/41.%20Ivory%20Trafficking%20in%20California,%20USA.pdf>.