

Punishing Ivory Owners Rather Than Saving Elephants: When Ideologues Take Over the Regulatory State

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Today the Advisory Council on Wildlife Trafficking is meeting in Washington, D.C. as the federal bureaucracy prepares to turn millions of Americans into criminals and destroy potentially billions of dollars in property by administrative fiat. Yet doing so would likely result in more elephant killings. The campaign appears to be driven by ideological rather than ecological fervor.

Poaching has increased over the last decade, putting African elephants at risk. Additional global cooperation is necessary to save them.

But America is not the problem. Wrote economist Brendan Moyle in a new study for the Ivory Education Institute: “the increase in poaching has bypassed the U.S. market completely.” Instead, the increased “raw ivory exports ... are heading mostly to East Asia and not to North America.”

Most ivory in America is legal. Coming from long dead elephants, its sale does not endanger wildlife today. Before the international ban was agreed to in 1989 millions or tens of millions of objects either made of ivory or accented by small amounts of ivory had entered the U.S.

There are pianos, guitars, and violin bows. Jewelry, canes, and chess sets. Gun stocks, knife handles, and card holders. Letter openers, book marks, and fans. Netsukes, statues, and beer steins. Crosses, balls, and seals. Clocks, pool cues, and poker chips. Furniture, musical instruments, and more. Some of these objectives are decorative masterpieces and historical treasures. They sit in museums, collections, and shops. They are traded by antique dealers and auction houses and at flea markets. They are repaired by carvers and restorers.

There are two obvious strategies to fight poaching. The first is to *fight poaching*. That is, target the bad guys, those illegally killing elephants and selling illicit ivory. Enhance the ability of African governments to protect wildlife, increase the benefits of protecting elephants to local residents, break up smuggling operations, and target dealers in poached ivory. The U.S. government long used this strategy.

The second approach is to play politics. That is, penalize the good guys, those trading in legal older ivory. Doing so wouldn't protect any elephants. It wouldn't prevent additional illicit ivory smuggling. It wouldn't stop people from buying items made from illicit ivory. But it would drive up enforcement statistics and punish ivory owners.

Unfortunately, the administration has decided to do the second.

In February the Fish and Wildlife Service announced a ban on the commercial import of antique ivory, heretofore allowed with appropriate documentation by the Convention on International Trade in Endangered Species (CITES). That means Americans, and only Americans, cannot buy an ivory item, no matter how

old. The policy will not reduce the number of antiques sold or stop any particular items from being sold. The change simply ensures that no American will be able to own ivories coming from other countries.

At the same time the White House announced its intention to prohibit “the import, export, or resale within the United States of elephant ivory except in a very limited number of circumstances.” In fact, FWS lamented that “Under current laws, we are not able to impose a complete elephant ivory ban.” Nevertheless, the agency described its actions as “our first step to implement a nearly complete ban on commercial elephant ivory trade.” The Service added: “we believe that the administrative actions available to us would result in a near complete ban.”

FWS plans to prohibit the sale of any antique (100 year-old) ivory the age of which the owner cannot “demonstrate” with “documented evidence.” Even with “documented evidence” old though non-antique ivories could not be sold across state lines. Since 17th century carvers were not in the habit of providing certificates of authenticity, virtually no ivory owner has such documentation, which Washington never before required. This would essentially end ivory sales in America.

Even if the documentation rule was more reasonable, the inter/intra-state distinction makes no sense. A Steinway piano with ivory keys produced in 1920 is little different from one made in 1900. Many antique ivory pieces have been repaired with newer, but still old, ivory. The residence of someone with a million dollar netsuke collection shouldn't affect his or her ability to sell it.

The argument for the rule is that it would make life easier for FWS. Just ban everything and the illegal trade will disappear. The demand for ivory will collapse. Poachers will quit. Elephants will flourish.

This is fantasy.

First, until politics changed the policy this year, FWS successfully targeted real criminals. For instance, CITES reported a high level of effective enforcement in America. In a 2008 study elephant researcher Daniel Stiles and conservationist Esmond Martin concluded: “The USA has a good record for seizures in accordance with CITES and US regulation concerning ivory and other wildlife trade at its borders compared with other countries.” In September 2012 the agency explained that from 1989 to 2007, U.S. seizures accounted for about 30 percent of those around the world. More recently, FWS touted its investigations into New York and Philadelphia dealers in smuggled ivory.

Second, the fact the law may be difficult to enforce is no excuse for treating those who followed the law and played by the rules as criminals. Yes, it might be impossible to distinguish a trinket made in 1989 from one made in 1990. However, there are important differences between most newer and older ivories. European-style carving died out decades ago. Genuine antiques differ in color, wear, style, stain, subject, and more. Indeed, dealers and collectors have to learn the difference since older items are worth immeasurably more. FWS should turn to collectors and dealers, who would be happy to assist agents in distinguishing new and old. New dating techniques through radiocarbon testing also are available.