

March 30, 2015

To: Members of the Oregon Senate Committee on Judiciary

RE: SENATE BILL 913 – Response to Amendment 1 and Testimony at March 23 Hearing

Knife Rights appreciated the opportunity to testify in opposition to SB 913 at its March 23 hearing. Since we did not receive proposed Amendment 1 until immediately prior to the hearing, our previously submitted letter did not address the Amendment. Further, in view of some of the misleading and outright false testimony provided by some supporters of SB 913 and the limited time available to testify, Knife Rights would also like to clarify some facts for the Committee.

Knife Right opposes proposed Amendment 1 for the same reasons identified in our previous letter to the Committee. The concept of the ban is fatally flawed, it is bad policy that harms honest Oregonians, it won't save a single living elephant, or extinct mammoths, and nothing in Amendment 1 changes that one iota.

With regards to the exceptions provided in Amendment 1, they are both flawed and would not have any significant positive impact on any of the targeted groups, save perhaps for the musicians who hypocritically are pleased to be exempted from the draconian financial impact this bill would have on most all other ivory owners in Oregon, while apparently being perfectly happy to see such lawful ivory owners other than themselves punished to no good end. Such hypocritical exceptions only make the case that this bill is not about saving elephants, but rather about making a political statement at the expense of honest law-abiding Oregonians whose lawful investments and trade in decades-old legal ivory has no impact on the illegal black market trade in ivory in Asia, primarily in China, that results in the poaching we all abhor.

In particular, the exception for knives is so limited in scope as to be worthless to all but a handful of knife owners. The 20% per volume requirement will immediately knock out the majority of few potentially eligible knives because the handle often comprises the majority of "volume" of a knife [, and often well over 20% of the weight].

Moreover, it is impossible to determine volume of the steel vs. ivory in many knives without performing a multi-view x-ray examination in order to determine the volume of the hidden tang of the knife, an expensive procedure itself, which is further complicated by the need to compute the volume from these x-rays with complex computations due to the irregular and often tapered nature of such tangs; both requiring expertise that is beyond the skills of a typical knife owner who would have to pay for such a determination. Most appraisers also are not equipped to perform such an examination or determination, so getting them done is even more difficult. In addition, calculating the volume for a multi-dimensional irregular form such as a knife and handle is, itself, difficult, at best, and subject to many variables.

The 100 year old requirement is extremely limiting because the vast majority of knives with ivory handles or decoration have been produced since WWII. Beyond that, proving provenance of most such knives is extremely difficult since original records rarely exist for these knives and there are only a handful of experienced knife appraisers in the entire country, none of which are located in Oregon. Then you have the obvious absurdity of the 99-year-old knife that is illegal today, but will be legal to sell next year.

The bottom line is that the exceptions are themselves just another example of the irrationality and arbitrariness of SB 913 which ignores commonsense in order to adversely affect many Oregonians.

One of those testifying tried to make a comparison to Oregon's Shark Fin ban, but that comparison is also fatally flawed. In the case of Shark Fins there was relatively little investment by honest law abiding Oregonians outside of a extremely small group, and even then the banned item is necessarily transitory in nature and could be readily

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consumed prior to the ban taking effect, so the adverse financial impact on Oregonians was extremely limited by the time it went into effect. In the case of ivory the adverse financial impact on a very large group of Oregonians will be significant and there's no evidence whatsoever that stealing their investments will accomplish the goal of saving elephants. Items owned by thousands, probably tens of thousands, of Oregonians worth in many cases tens of thousands of dollars, and in some cases of collections, worth ten times that or more, would be instantly devalued to zero.

Beyond that, we can look to our own history to see what the unfortunate result will be. There is no question that the result of this massive and unfair taking from citizens, many of whom may desperately need to turn their ivory investments into cash at some point, is going to be a thriving black market where none exists now. This has already occurred in the only two states that have enacted a ban last year, even with their limited exceptions. Meanwhile, attempts at enforcing this ill-conceived ban will put a drain on already scarce resources and manpower that the state can ill-afford. And, that doesn't even take into consideration the cost to the state of defending federal lawsuits(s) that such a ban will likely generate. When you take millions of dollars from law-abiding citizens without compensation or demonstrable benefit to the public, they are unlikely to just roll over without a fight.

Proponents of an Ivory Ban testified that this action is necessary to save African elephants from imminent extinction. While this claim is traceable to a dramatic surge in African elephant poaching that threatens some elephant populations in countries with weak governments and poor conservation programs, the justifications for a ban have drifted far from relevant science, law, political and economic realities in Africa and around the world. The ivory ban in Oregon is unsupportable by reality.

Facts and Science Concerning Elephant Poaching and the Illegal Ivory Trade

The primary sources for credible statistics about elephant populations are from programs formed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES began focusing on elephant conservation and the ivory trade in earnest after international ivory trade bans went into place in 1990. The Monitoring Illegal Killing in Elephants (MIKE) and Elephant Trade Information System (ETIS) programs monitor elephant populations and confiscations of illegal ivory in Africa and around the world. MIKE has been collecting data for over 10 years. The most recent report was presented at the 65th Meeting of the Standing Committee for CITES held in Geneva, Switzerland, from 7-11 July 2014.¹

As in prior CITES reports, this report acknowledged the difficulty with monitoring wild elephant populations across the continent of Africa and its many different habitats. Tracking illegal activities is even more challenging. The best available information indicates there are anywhere from 420,000 - 650,000 elephants living in Africa. Elephant poaching began to rise sharply in 2008 and peaked around 2011, four years ago. At its peak in 2011, CITES estimated 25,000 elephants were illegally killed. That number fell to around 22,000 in 2012, and fell again to around 20,000 in 2013. These poaching rates coincided with a spike in Chinese demand for illegal ivory products, and China is far and away the largest end-destination for illegal ivory, followed by other Asian countries.

The CITES report also explains that African elephant poaching rates varied dramatically between different countries and regions in Africa. Elephants in Africa's forested Western region, which account for approximately 2% of African elephants, face the greatest threat of extinction due sparse population

density, changes in habitat and illegal poaching. Central Africa, which holds about 16% of Africa's elephants, is the next most dangerous area. East Africa has the third highest poaching rate and has about 28% of Africa's elephants. The lowest rate of poaching is in Southern Africa where 55% of Africa's elephants live. Poaching rates vary further as you drill down into specific countries or national wildlife parks. Where there are strong conservation programs and relatively stable governments, African elephant populations are stable and growing – some growing larger than their

¹ Elephant Conservation, Illegal Killing and Ivory Trade, presented at the 65th Meeting of the CITES Standing Committee, SC65 Doc 42.1, 7-11 July 2014. (http://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-42-01_2.pdf)

habitat can support, threatening both elephants and other threatened species.²

Shortly after the CITES report was presented in Geneva, an article was published in the Proceedings of the National Academy of Sciences of the United States of America (PNAS).³ This article significantly inflated the CITES estimate of

poached elephants in Africa and provided support for ivory ban advocates' claims that 35,000 elephants were poached in a year. The PNAS paper reviewed the same data collected for the CITES report and applied different assumptions for the rate of poaching without explaining why they used different assumptions, a significant and notable failing of standard procedures that prevents adequate peer review. They employed two different statistical models to the data, one misleadingly labeled the "Empirical Method" and the other the "Model Method." Based on their models, 21,477 to 29,124 elephants were poached in 2010, 39,692 to 41,044 elephants were poached in 2011, and 31,616 to 38,828 elephants were poached in 2012. PNAS did not estimate poachings for 2013, citing a lack of data.

While not fully explained, an analysis of their inflated results correlates to significantly increased seizures of tusks by local and national law enforcement activities which themselves have increased significantly during these periods with commensurate increased success⁴. To suggest that more ivory seized as a result of increased law enforcement indicates increased poaching is disingenuous. That would be like saying that speeding is increasing on a section of roadway after the number of cops on patrol or using radar was doubled or tripled with the commensurate increase in speeding tickets written. The logical connection is simply not there. The proponents of the ivory ban are simply using misleading and irrational numbers to bolster their case. Although the inflated PNAS poaching estimates remain largely unexplained and therefore suspect,⁴ the PNAS paper and CITES reports agree in most other material findings:

- African elephant poaching dramatically increased in 2008, peaked in 2011, and has been in decline since 2011
- The rate of African elephant poaching coincides with increased demand for illegal ivory in China and other Asian countries
- The most effective ways to promptly reduce poaching are to disrupt supply lines to China and increase conservation/law enforcement efforts in Africa
- Reduced ivory demand in China ought to reduce black market prices for ivory, which in turn should reduce incentives for illegal elephant killing in Africa.

² Annex I of the CITES report provides detail about regional and country level elephant populations. For a perspective on habitat and how elephant overpopulation not only threatens elephants but also other animal and plant species (hardwoods in particular), see *The Elephant and the Pauper: The Ivory Debacle* by the Hunter Proud Foundation and The Osprey Filming Company. (<https://vimeo.com/user17366897/review/116473289/88ae4be861>)

³ Wittemyer, Northrup, Blanc, Douglas-Hamilton, Omondi & Burnham, *Illegal killing for ivory drives global decline in African elephants*, *Proceedings of the Nat. Acad. of Sciences of the USA*, PNAS 2014 111 (36) 13117-13121; published ahead of print August 18, 2014, doi:10.1073/pnas.1403984111.

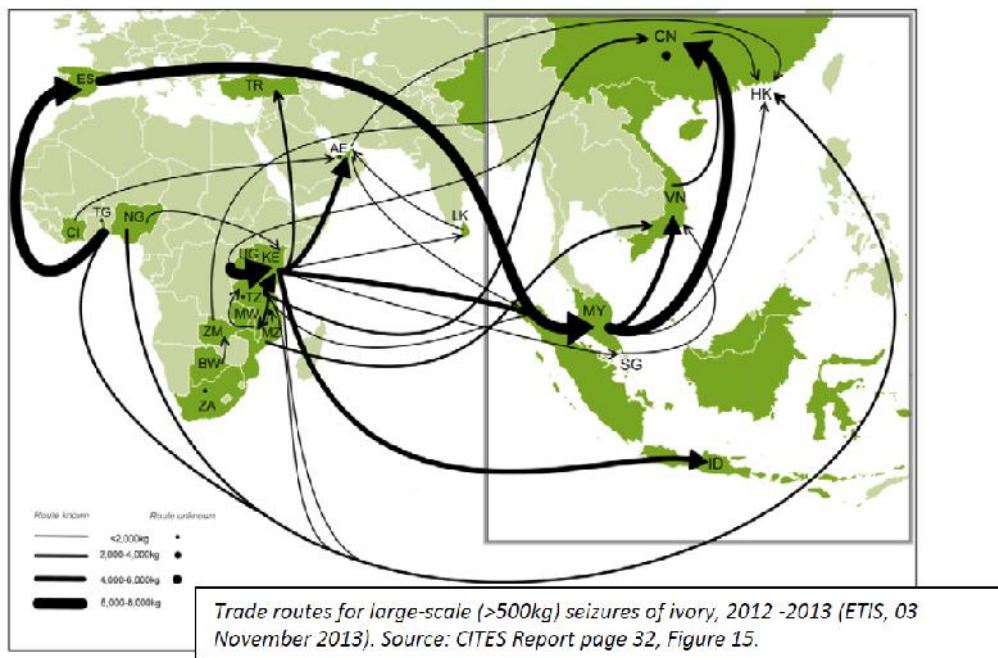
⁴ As one example, the paper properly credits "[h]eavy in situ conservation efforts" with "stem[ming] illegal harvesting," which is another way of saying increased law enforcement reduced poaching. As discussed elsewhere in this letter, increased law enforcement also resulted in a higher number of illegal ivory seizures. However, in the PNAS article's Supporting Information, the authors state they factored in the three year running average mass of large ivory seizures into their poaching estimates. This means that while the authors credit law enforcement with reducing poaching, they also built in a higher number of estimated illegal poachings due to the higher amount of ivory seized in conjunction with that increased law enforcement. Any statistically-based increase in poaching attributed to the increase in seized ivory is highly suspect and would artificially inflate the PNAS paper's poaching estimates.

As far as the United States’ role in the illegal ivory trade is concerned, neither CITES nor the PNAS paper identified any significant flow of illegal ivory into the United States. Although the United States has a well-developed market for trading antiques, art, musical instruments, firearms, knives, scrimshaw and countless other items that incorporate ivory, these items are made from or embellished with ivory taken from animals long before the surge in African elephant poaching and international trade bans imposed in 1990. As the USFWS stated in its September 2012 fact sheet⁵, there is no significant trade of illegal ivory into this country.⁶ Instead, it is very well documented that the illegal trade is in China.

Economics of Ivory

As noted in our previous letter to the Committee, price for domestic resale of raw African elephant ivory imported into the United States before 1990 was \$250 per pound. That price had remained stable for a decade or more. This figure is based upon statements from David Warther of Ohio, a dealer in pre-ban ivory whom the US Fish and Wildlife Service has used as an expert witness during smuggling prosecutions to testify about the value of ivory in the United States. On the other hand, USFWS and related organizations have widely reported that illicit ivory trades in China and Southeast Asia for up to \$1500 per pound. It is irrational to believe that smugglers would contend with the heightened risk of interdiction with U.S. customs and border security to smuggle significant amounts of illicit ivory to the

U.S. for one sixth the price it could receive for selling it in the lower risk and higher profit countries in Asia. As discussed above, both USFWS and CITES have clearly stated that the trade of illegal ivory into the United States is not significant, supporting the economic price evidence. The CITES report graphically demonstrates economics and trade route information in the chart below, making it clear that the U.S. market for ivory is insulated from illicit



⁵ U.S. Fish and Wildlife Service, U.S. Efforts to Control Illegal Elephant Ivory Trade and Internal Markets, <http://www.fws.gov/international/pdf/factsheet-us-efforts-to-control-illegal-ivory-trade.pdf>, September 2012.

⁶ FWS and other sources frequently cite the prosecution of Victor Gordon, a Philadelphia dealer in African Art who pleaded guilty in 2014 to smuggling elephant ivory into the United States. However, the case against Mr. Gordon started when agents seized ivory from Mr. Gordon’s store in 2009. That means Gordon’s ivory was imported to the United States well before African elephant ivory poaching peaked and has nothing to do with the current crisis. See "Ivory smuggling lands Philly store owner in prison," Philadelphia Inquirer, June 4, 2014. The utter dearth of timely examples of illegally importing ivory prosecutions into this country provides further confirmation of the insignificance of the illegal ivory trade into the United States.

trade of ivory in Asia, and banning trade of legal pre-1990 ivory in the United States or antiques will not reduce poaching in Africa.

The Politics of Ivory Bans

Instead of relying on science and economics, ivory ban advocates state that they are motivated to change the demand for ivory by setting an example for smugglers in China and Asia through harsh enforcement of enhanced wildlife trafficking laws in the United States. This rationale, too, fails even superficial scrutiny logically, practically and politically.

The goal of an Oregon Ivory Ban is to strip ivory in Oregon of all commercial value by prohibiting its sale with narrow exceptions incorporated into Amendment 1 with unrealistic requirements designed to frustrate any commercial use of elephant ivory. The goals and methods of this ban are unconstitutional takings without due process or adequate compensation. Setting those very serious legal issues aside, this policy is doomed to fail because of its naiveté, willful ignorance of local governments who host elephants, and disregard of growing relationships between Africa and China to the detriment of Western influence in Africa.

Relationship to Terrorism

In addition to the bogus claims of imminent elephant extinction or irrational links between legal pre-ban decades-old ivory in the United States and current Chinese demand for illegal ivory, one other argument was presented in testimony by proponents to justify an Ivory Ban was that illegal poached Ivory funds international terrorism. Like their other arguments, this claim fails to survive scrutiny.

In 2014, the United Nations Environmental Program (UNEP) and INTERPOL jointly published a Rapid Response Assessment entitled ***The Environmental Crisis: Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources***. This report assessed threats to Africa from all wildlife crime, not just elephant poaching. By doing so, it put the illegal ivory trade in context with a wide variety of other wildlife crimes taking place in Africa.

Like the CITES report, the UNEP/INTERPOL assessment estimated 20,000 to 25,000 elephants were illegally killed in Africa per year out of a population of about 420,000 - 650,000. It estimated an annual end-user street value of poached African ivory in Asia of \$165-188 million, an amount that is dwarfed by income from illegal logging and forest crime (mostly illegal charcoal, Africa's primary fuel), estimated to be \$10 - 100 Billion.

The report discussed brutal criminal groups operating in Africa but who do not have reach beyond their region. Although they pose serious criminal problems in the regions they operate, they do not pose the kind of threat one typically associates with "international terrorists," and pose no threat to the United States or countries beyond their regions. UNEP/INTERPOL identified the Lord's Resistance Army, operating in the border triangle of South Sudan, the Central African Republic and the Democratic Republic of the Congo, as a criminal militia group for which illegal ivory is one source of income.

Likewise, they identified the Janjaweed and other "horse gangs" operating between Sudan, Chad and Niger as groups that use ivory as one source of income. Given the estimated elephant populations and number of projected killed elephants within striking range of these militia groups, the report finds likely annual income from ivory to militias in the entire Sub-Saharan range is likely in the order of \$4 – 12.2 million.

The most notorious "international terrorist" group in Africa is Al Shabaab. The report says that Al Shabaab's primary income appears to be from informal taxation (extortion) at roadblock checkpoints and ports. The report cites one roadblock case where they have been able to make up to \$8-18 Million per year from charcoal traffic in Somalia's Badhadhe District. INTERPOL estimates trading in charcoal and taxing ports have generated \$38 – 56 Million for Al Shabaab, and militia and terrorist groups combined may gain \$111 – 289 Million from an illegal charcoal trade estimated at \$360 – 384 Million annually. The gains from this illegal activity dwarf the illegal ivory trade, and

INTERPOL *found no evidence of Al Shabaab participation in the illegal ivory trade.* This is unsurprising since the area where Al Shabaab is active has few if any elephants, even if they wanted to engage in that trade.

The clear implication of this report is that Ivory Ban advocates are grossly exaggerating the link between the illegal ivory trade and "international terrorism." While it goes without saying that African poachers are criminals, and that many of those criminals have affiliations with dangerous criminal groups like the Lord's Resistance Army and the Janjaweed, those groups are regional in scope with practically nonexistent international influence. Groups that do have international terrorism influence have little interest in the illegal ivory trade because they do not operate in areas where elephants live and there are far more lucrative criminal pursuits than the trade of poached ivory. So, once again, this argument in support of an ivory ban fails when exposed to the real facts.

Conclusion

Forcing honest citizens to become criminals because of arbitrary laws with no basis in reality or value to the state, as the Vice-Chair clearly understood by his closing comments, is not good governance. Doing it in pursuit of some theoretical benefit that flies in the face of historical precedent, the reality of the actual circumstances of the illegal ivory trade, and plain old commonsense, would be an offense to Oregonians who expect to be treated honestly and fairly by the government they elected. Taking their private property without compensation is neither.

This misguided ivory ban is ill-conceived, offensive and most likely unconstitutional. Knife Rights urges you to vote against SB 913, a bill that would unfairly penalize Oregon's ivory owners for others' illegal and immoral activities that continue to threaten elephants, and which this proposed ivory ban does nothing to ameliorate.

Respectfully submitted,



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Chairman