

September 21, 2015

Public Comments Processing
Docket No. FWS-HQ-IA-2013-0091
Division of Policy, Performance and Management Programs
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS: BPHC
Falls Church, VA 22041

Re: Endangered and Threatened Wildlife and Plants; Revision of the
Section 4(d) Rule for the African Elephant (*Loxodonta africana*)
Docket No. FWS-HQ-IA-2013-0091

Gentlemen:

This letter is submitted by National Association of Music Merchants (NAMM), the trade association for the international music products industry, in response to the request for public comment on the proposed revision of the Section 4(d) Rule for the African Elephant. The notice was published in the *Federal Register* on July 29, 2015 (80 FR 45154).

Founded in 1901 and headquartered in Carlsbad, CA, NAMM has more than 9,000 members in the United States and 100 other countries and is dedicated to expanding the market for music products and giving people of all ages the opportunity to experience the proven benefits of making music.

NAMM's members represent all segments of the music products industry, *i.e.*, manufacturers, distributors and retailers, as well as all types of music products entities, including those involved in both instruments and accessories. The association's membership ranges from large companies to individual artisans producing hand-crafted products. As a result, NAMM has a unique perspective on issues facing music products industry members of all types and sizes. All of NAMM's members are dedicated not only to expanding the market, but also to preserving the raw materials that are used in the manufacture of the products they sell.



***De Minimis* Exception**

Ivory has been used in a variety of musical instruments, including guitars, violin and other string instrument bows, pianos and organs, bassoons and other woodwinds, bagpipes and certain percussion instruments. In general, the use of ivory stopped in the mid-1970's. Many of the instruments which contain ivory are still in use today and are valued by both professional and amateur musicians, not because the instruments contain ivory, but because the instruments have excellent musical sound attributes.

NAMM is appreciative that the Fish & Wildlife Service (FWS) has created a *de minimis* exception to recognize that items with small amounts of ivory, where, among other things, the ivory is not the primary source of the value of the item and the item is not made wholly or primarily of ivory. The exception, as FWS has noted, recognizes the fact that these items do not contribute to the continuing illegal acquisition of elephant ivory.

NAMM believes that the 200-gram exception contained in the proposed rule would act to exclude the vast majority of ivory-containing musical instruments from the proposed domestic commerce ban and NAMM commends the FWS for recognizing the cultural importance of these instruments.

We do have some concerns about the proposed exception. We would first point out that the proposed exception would not include some bagpipes and organs (including pipe organs) and we would urge consideration of a modification of the exception in some manner to accommodate these instruments. More significantly, however, we would urge the FWS to include some type of implementation advice – perhaps in the form of an instrument-specific “safe harbor” – that would enable both the industry and law enforcement to easily determine compliance with the 200-gram limitation without having to resort to some kind of destructive testing to determine actual weight.

Documentation

Many commenters have urged FWS to specify the types or examples of documentation which may be required to prove the authenticity of ivory-containing products. NAMM believes that the language in the so-called “use after import” rules applicable to CITES-listed species is sufficient and that no documentation requirements in addition to, or different from those contained in the “use after import” rules should be adopted.

Specificity can only lead to confusion, in our opinion, and the current rules should be allowed to stand as issued.



Repair of Ivory-Containing Products

The FWS proposal notes that shipping ivory-containing items across state lines for the purpose of repair would not fall under the prohibition for “commercial activity.” The proposal suggests that the repair would be exempt unless the activity involved using “additional ivory” to repair the item.

This language could be read to provide that in the instance of a musical instrument shipped for repair, the repairer could only repair the damaged ivory, but not replace it with ivory (assuming that the replacement ivory was lawfully-obtained). Under this interpretation, a piano technician who received a piano with two damaged keys (but with the other 86 keys in tact) could not replace the damaged keys with other ivory keys which the technician had in inventory, but would be limited to only repairing the damaged keys.

NAMM believes that this is not a common-sense interpretation, i.e., that replacement of damaged parts with lawfully-obtained ivory should be allowed, but that addition of other ivory (such as by adding new inlays not otherwise present) should be prohibited.

Exception for Museums

The FWS proposal notes that the agency is considering an exception to the general prohibition for museums. Because many museums and other types of tax-exempt entities often acquire ivory-containing musical instruments by purchase as well as by donation, NAMM strongly supports such an exception.

We would urge that the exception be granted to any entity which holds a federal income tax exception under Section 501(c)(3) of the Internal Revenue Code, as amended. This would allow museums to acquire culturally-significant items, churches to purchase used pipe organs from other churches, and orchestras to obtain instruments for their musicians.

We believe that such an exception should not be limited to antique items, would serve the public interest and should be included in the final regulations issued under this proceeding, rather than be the subject of a separate rule-making activity.



Export of Ivory-Containing Products

FWS proposes to change current rules pertaining to the export of ivory-containing products by limiting such commercial exports to only those items meeting the antiques exception.

NAMM urges FWS to reconsider this decision and permit commercial exports of items containing a *de minimis* amount of ivory as would be allowed for domestic interstate and foreign commerce. NAMM does not see the logic in allowing the shipment by a U.S. company of *de minimis* items from one foreign country to another while prohibiting the same shipment if made from the U.S. to a purchaser located abroad. Appropriate pre-CITES documentation should be required.

Travel

With regard to non-commercial travel with musical instruments into the United States, NAMM supports the removal of the restriction, contained in amended Director's Order 210, that the instrument must have been purchased not later than February 25, 2014.

Conclusion

NAMM has appreciated the opportunity to work constructively with FWS in the past and we would be happy to discuss these issues in greater detail with appropriate FWS personnel.

Sincerely,



Mary L. Luehrsen
Director of Public Affairs and
Government Relations

