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The Administration's New Ivory Ban: I'm From The Government And I'm Here To Kill Elephants And Treat Americans As Criminals

By Doug Bandow
March 17, 2014

On Thursday the Advisory Council on Wildlife Trafficking is meeting near the nation's capital to plot the administration's impending ban on ivory sales. The panel is charged with saving endangered animals, but its proposals would accelerate the slaughter of African elephants.

Moreover, this obscure committee would turn millions of law-abiding Americans into criminals. The Council also would destroy hundreds of millions of dollars worth of property legally acquired by everyone from antique dealers and restorers to tourists and retirees.

Elephants are magnificent creatures—intelligent, social, and expressive. But their tusks have been called white gold, encouraging widespread and well-organized poaching.

Unfortunately, elephants have few effective defenders. The animals destroy everything before them, stripping trees of foliage and bark, trampling crops underfoot, and killing farmers and villagers who get in the way. Thus, many local people view poachers as friends.

African governments have limited means while confronting other serious problems, including pervasive poverty, ethnic division, and violent conflict. Agencies often are ineffective and incompetent; officials often are disinterested and corrupt.

International activists, groups, and governments are better at hectoring African states than in developing new, more effective conservation strategies. In fact, Western elites sometimes appear more interested in feeling virtuous than in deterring poaching.

For instance, in 1989 the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) outlawed the sale of new ivory. Unfortunately, the ban increased the price of ivory, which remains in high demand. Carving has essentially died out in the West, but sales are strong in ever-more prosperous Asia; China alone accounts for 70 percent of tusks from poached elephants.

Thousands of elephants are still killed annually. Daniel Stiles of the IUCN/SSC African Elephant Specialist Group explained: “The inconvenient truth is that the CITES ivory trade ban and [subsequent CITES] votes to cut off legal raw ivory supplies are the real causes of the recent elephant holocaust.”

Yet the U.S. and other nations recently made a great show of destroying ivory stockpiles, which could have been sold to dampen prices and provide revenues for conservation. Far worse, the U.S. Fish and Wildlife Service plans what it calls “a nearly complete ban on commercial elephant ivory” trade.

Talented craftsmen long used ivory to make items both practical and beautiful. “Ivory has fulfilled a key role in most of the world’s civilizations since the beginning of recorded time,” explained the International Ivory Society.

Among the most beautiful chess sets are carved ivory. Tusks were turned into stunning beer steins. Japanese netsukes exhibit the finest oriental craftsmanship. Stunning statuary was carved out of ivory. There are ivory canes, clocks, buttons, jewelry, poker chips, tools, card cases, and toys. Piano keys once were ivory, which also was used for other musical instruments. Book marks and page turners as well as religious objects, such as crosses, were made out of ivory. Ivory was used for gun stocks, knife handles, and furniture accents, as well as a myriad of other purposes. Today these items—all created, sold, given, and bequeathed legally over decades and centuries—have made their way into private collections and public museums, and are exchanged by flea market amateurs, sophisticated antique dealers, and internationally-known auctioneers across America and the world.

Outlawing this trade makes no sense. In September 2012 USFWS admitted: “we do not believe that there is a significant illegal ivory trade into this country.” Most ivory in America, 95 percent or more, is older and legal.

Obviously, buying and selling objects derived from elephants long dead does not endanger elephants today. Some activists view anything ivory with disdain, but moral vanity is no substitute for practical acumen. One could burn every existing piece of ivory—in fact, Great Britain’s Prince William recently advocated destroying the royal family’s historic ivories—and not one additional elephant would be saved. To the contrary, any such attempt actually would further hike the value of ivory and thereby increase the incentive to kill elephants.

USFWS argues that it is hard to distinguish between new and old ivory—“legal ivory trade can serve as a cover for illegal trade”—so the agency’s answer is to turn most everyone who attempts to sell most any ivory into a criminal. After all, it then “will be more difficult to launder illegal ivory into the market.” In short, if you can’t catch the bad guys, declare everyone to be a bad guy! If you have trouble finding the relatively small amount of illegal new ivory sold today, declare everything ivory to be illegal, increasing the illicit total *20-fold!* Then it won’t be hard to find ivory products to seize and traffickers to arrest.

Weirdly, museums would be exempt from the prohibition. But why shouldn’t they lead if banning legal ivory is necessary to save elephants? Moreover, the administration would continue

to allow the import of tusks from sport hunting. Items also could be imported as part of household moves, which would turn the tens of thousands of military personnel who rotate every year into potential sources of illicit ivory.

Criminalizing the law-abiding is a tactic of the indolent, not the serious. No doubt, some sellers of new ivory try to make it look old. And the difference between legal carving in the 1970s and illegal in the 1990s may not be obvious. But the vast majority of antique ivory, which is what most collectors desire and acquire, is obviously antique. Differences from modern items include region, style, purpose, subject, character, and quality. Many aspects of age are hard to fake: cracks, patina, wear, stains, and more. Admittedly, enforcing the law requires effort, but that is no reason to treat innocent and guilty alike.

Turning everyone into a criminal would accelerate the slaughter of elephants. Today USFWS says it has trouble stopping the import and sale of a limited amount of poached ivory. So it proposes greatly increasing the amount of illegal contraband and number of illegal traffickers. Agents would have to visit flea markets as well as antique shows, and police online listings as well as auction offerings.

This obviously would dissipate already highly limited enforcement resources. And the government's incentive would be to fire at the easiest targets—who are not today's well-organized illicit poachers. The agency says it wouldn't go after people selling family knick-knacks, but anyone who counted on not being prosecuted for violating the law by agents and prosecutors hoping for an easy boost to their enforcement statistics would be a fool. And who would dare buy the ivory, even if it was offered for sale? Indeed, any collector or dealer with ivories of substantial quality or quantity inevitably would be in the agency's crosshairs.

Moreover, rather than develop a strategy enlisting collectors and dealers, who have expertise in distinguishing between old and new ivory, to help ferret out illegal poached ivory, USFWS would turn every owner of legal ivory today into an enemy. Under these rules a collector or dealer would be stupid to cooperate with the government.

The de facto ban also would help finance illicit trafficking networks. Americans are unlikely to docilely allow government to steal their property. Many if not most of them would still try to sell property they purchased, inherited, or otherwise acquired legally. Thousands or millions of Americans would attempt to get something back from their investments.

Sales would go underground. Some people would trade online, such as eBay, relying on camouflaged descriptions, amplified by off-line contact. Others would turn to trusted networks of collectors and dealers. Some number would feel no choice but to yield to the dark side and turn to people who know best how to flog illegal ivory objects—those currently dealing in products made of poached ivory. The market for faked documentation, from invoices, receipts, and appraisals to official CITES certificates, would burgeon.

All of this would enrich and empower today's criminals dealing in poached ivory. The fact the policy is likely to prove ineffective is reason enough for the administration to reverse course.

But criminalizing otherwise legal conduct also would be unfair to the millions or tens of millions of Americans who followed the rules in building businesses and collections involving ivory. Imagine Washington declaring that since it is difficult to distinguish between legitimate diamonds and “blood diamonds” used by warring groups in Africa, diamonds no longer could be sold in America.

Moreover, the planned ivory ban makes nonsensical distinctions and favors those with friends in high places and possessing high-value collections and inventories. The administration already has outlawed all ivory imports, even of recognized antiques (which currently are tightly regulated and require CITES certification). This action reflects pure spite: poachers don’t send their products through global auction houses with international certification and inspection.

The government’s secretive rule-making process caught many people unaware. Tony Blumka, a New York dealer in ivories dating back to medieval times, shipped most of his inventory to Europe for a major show. He told *The Magazine Antiques*: “I can’t bring them home even though they are thoroughly documented, often with provenance going back centuries.”

Exports of legal ivory would be more highly restricted, limited to antiques, though the rule’s exact parameters are not yet clear. If the administration genuinely believes the U.S. market is a problem, why hinder carefully controlled antique *exports*? Again, one suspects the principal desire is to punish collectors and dealers, who would have increased difficulty disposing of legally acquired items.

Most dramatically, the administration would ban interstate sale of anything not an antique, meaning 100 years old. Newer, legal items dating before 1989 could be sold only within states. The proposed age distinction between legal ivories is bizarre. Imagine two collectors possessing 90-year-old legal ivory objects. If one lived in Wyoming and the other in California, too bad. Both may be Americans, but it would be illegal for them to trade with one another!

Sellers also would have to prove the age “through documented evidence.” Alas, documentation does not exist for most ivories owned by most people since it has *never before been required*. Unfortunately, carvers from decades and centuries ago did not provide notarized affidavits and certificates of authenticity. Deceased parents didn’t include original receipts and descriptions with their bequests. Dealers failed to provide expert certifications when making sales.

Will there be any alternative to nonexistent documents? In relation to products made from other endangered species USFWS said traders “must definitively prove” age through scientific testing or “qualified appraisal” determined by the government to be reliable. Even if these looser standards were applied to ivory objects, the cost of testing and appraising would be high, too high for most products devalued by the increasing uncertainties of the ivory marketplace.

Demanding unreasonable and unavailable documentation is to impose a ban in reality. Perhaps USFWS preferred an absolute prohibition but feared legal challenge, since individual collectors and dealers have invested hundreds, thousands, and even millions of dollars in reliance on past

policy. By leaving a nominal right to sell the administration may hope to thwart claims of government takings under the Fifth Amendment.

Rather than treat law-abiding Americans as adversaries, the advisory council and USFWS should develop a tougher strategy targeted against the real criminals—those guilty of killing elephants, poaching tusks, and selling illegal objects. Washington should start by working with African governments tasked with protecting elephants. These states should be allowed to sell ivory seized from poachers and collected from elephants which died naturally or were culled to raise revenue to both improve enforcement and reimburse local communities which lose crops and homes to elephants. More broadly a legal ivory market could help infuse value to *live* elephants and reward those who contribute to their protection.

At home the administration should build on present policy and target those dealing in illicit ivory. Already some states, such as New York, require dealers in ivory to procure licenses. USFWS should make legitimate collectors and dealers allies and train government agents how to distinguish new and old ivory. Any new regulations should not penalize people who acted and invested in good faith based on rules in force for decades.

Counter-productive and unfair penalties cannot be justified because government officials want to take a short-cut. If the administration insists on turning millions of innocent Americans into criminals, they should treat that policy as a declaration of political war.

A ban on ivory sales might appear to be an esoteric issue of interest only to a few people. But it raises fundamental questions: Is the U.S. still governed by the rule of law, does government still respect private property, and can citizens expect law enforcement to treat them with basic fairness? If not, all Americans will have lost something very important.

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