
ADVISORY COUNCIL ON WILDLIFE TRAFFICKING MEETING

*U.S. Fish and Wildlife Service
4401 N. Fairfax Drive
Arlington, Virginia*

March 20, 2014

PRINCIPAL ATTENDEES

Committee Members

Judith McHale	President & CEO Cane Investments, LLC (on phone)	Tod Cohen	Vice President and Deputy General Counsel, eBay Inc. (on phone)
David Hayes	Distinguished Visiting Lecturer of Law Stanford Law School	Cristián Samper	President & CEO, Wildlife Conservation Society
David Barron	Chairman, Board of Governors, the ICCF Group (on phone)	John Webb	Independent
Carter Roberts	President & CEO, World Wildlife Fund		
Patrick Bergin	President & CEO, African Wildlife Foundation		

Alternate Committee Members

Marcus Asner Partner Arnold & Porter LLP

PROCESS SUPPORT

Bryan Arroyo, Designated Federal Officer, Assistant Director – International Affairs, U.S. Fish & Wildlife Service
Letty Belin, acting Designated Federal Officer, Chief of Staff – Deputy Secretary, Department of the Interior
Cade London, acting Designated Federal Officer, Special Assistant – Assistant Director for International Affairs.

MEETING PURPOSE

For the Advisory Council on Wildlife Trafficking to discuss the implementation of the National Strategy for Combatting Wildlife Trafficking

MEETING OBJECTIVES

- To manage administrative matters in a public forum
- For the Council to share with the public the work of the subcommittees and the Council's initial recommendations for implementing the National Strategy
- To receive input from the public at large regarding wildlife trafficking and poaching activities and enforcement

SUMMARY DISCLAIMER:

While language was incorporated from many of the commenter's statements in this document, this language was used to summarize points, and is not to be considered verbatim dicta, unless otherwise indicated. Statements made in this summary do not represent any official position of the United States Government or of the Advisory Council on Wildlife Trafficking. A full audio recording of the Council meeting can be found at <http://www.fws.gov/international/advisory-council-wildlife-trafficking/>

WELCOME AND INTRODUCTIONS

Judith McHale, Chair, participating remotely in the meeting via conference line, gave opening remarks and welcomed participants to this second meeting of the Advisory Council (Council). Ms. McHale noted that the point of today's meeting was to discuss the way forward and implementation of the newly developed national strategy. She also noted that the Council members had created the following four subcommittees: legal framework and reform; enforcement; communications and advocacy; and public-private partnerships.

Ms. McHale reminded attendees that the Council had been convened to work with the Government and serve as an important bridge between the public and Government in addressing the critically important issue of wildlife trafficking. She acknowledged that there had been tremendous interest in recent administrative actions taken with regard to the trade in elephant ivory, and noted that there would be additional opportunities for public input into the rulemaking process. She concluded by noting that the Council was intending to host two additional public meetings during this calendar year, and she invited attendees to regularly check the Council's website to stay abreast of the most recent developments on implementation of the National Strategy.

David Hayes, Vice-Chair, invited the Council members to introduce themselves and note their affiliations. Mr. Hayes noted that the Presidential Task Force (Task Force) recently launched the National Strategy for Combatting Wildlife Trafficking (National Strategy). He reiterated that the role of the Council is to serve as a conduit for ideas from the public to the Government to assist the Task Force in implementing the National Strategy. He added that the National Strategy is a wide-ranging document that identifies a large number of initiatives aimed at facilitating a whole of government approach to address the wildlife trafficking crisis.

With regard to the four subcommittees formed under the Council, Mr. Hayes announced that he would ask each of the chairs to discuss their recommendations for the benefit of the attendees and to facilitate discussion, both within the Council and from members of the public. He noted that the legal frameworks and reform subcommittee is co-chaired by Marcus Asner and Susan Lieberman, the enforcement subcommittee is co-chaired John Webb and Crawford Allan, the communications and advocacy subcommittee is co-chaired by Patrick Bergin and Carter Roberts, and the public-private partnerships subcommittee is chaired by David Hayes.

DISCUSSION OF THE SUBCOMMITTEES' FOUR MAJOR AREAS

Legal frameworks and reform subcommittee

Marcus Asner reported on the legal frameworks and reform subcommittee, noting that Tod Cohen and David Barron also served on the subcommittee. Mr. Asner noted that a number of the

subcommittee's specific comments are reflected in the National Strategy but that others are reflected more broadly and he noted his hope that they would be more fully reflected in the implementation of the National Strategy.

He reported that the subcommittee determined that it would be appropriate to include wildlife crime as a predicate offense under the Racketeer Influenced and Corrupt Organizations Act (RICO). He also reported that the subcommittee believed that it would also be appropriate to include wildlife trafficking as an unlawful under the Travel Act, and include it under federal money laundering statutes. Mr. Asner noted that these statutory changes would provide additional tools to address wildlife trafficking and increase penalties for criminals. He noted that these changes will also signal to the international community that the United States considers wildlife trafficking a serious crime in the same way as crimes listed under Title 18.

A second area of discussion within the subcommittee was increasing the penalties and monetary fines for wildlife crime. Mr. Asner reported that the subcommittee members observed that the Endangered Species Act (ESA) provides very low penalties and, as a result, many violators simply consider it as the cost of doing business. They suggested that penalties under the ESA should include criminal penalties. They also recognized that criminal penalties would only be triggered when there was a "knowing violation."

The subcommittee members also discussed U.S. sentencing guidelines, noting that federal judges are required to consider them. Mr. Asner reported that the subcommittee members suggested asking the U.S. Sentencing Commission to explore the possibility of increasing penalties for wildlife crime. The subcommittee members suggested that the Task Force should undertake a thorough review of the current penalties to determine if they are appropriate and also review the current federal statutory landscape to identify other possible changes.

The third area of focus in the subcommittee discussions concerned the issue of victims. Mr. Asner noted that historically, much of the discussion has focused on charismatic animals and concern that they are being harmed. However, he noted that the issue of poaching and wildlife trafficking has an impact on human communities and that there was a need to focus on the economic value of wildlife to the people who coexist with it. He stressed the need to enhance the federal restitution statutes, noting that it is not likely to be controversial and would be an "easy fix." Mr. Asner noted that the subcommittee members suggested three changes in line with this issue. The first is to amend federal restitution statutes to specifically cover wildlife crime. Second, the subcommittee members suggest creating a rebuttal presumption about restitution, such that the victim in a wildlife crime would be the country or state of ownership and would be entitled to restitution. Third, the subcommittee members propose creating a fund in cases where there is an absence of an identifiable victim, which would be used to fight poaching and wildlife trafficking. Finally, the subcommittee members wished to hear from members of the public, particularly with regard to issues beyond the discussions to date on elephant ivory and rhinoceros horn.

Mr. Hayes noted that, at this point in the discussions, it would be a good time to allow Bryan Arroyo, Assistant Director-International Affairs, U.S. Fish and Wildlife Service (Service), to provide additional information concerning the Service's plans regarding elephant ivory. Mr. Arroyo noted that the Service's goal is to improve the rules governing ivory trade, and he expressed his gratitude to the Council for identifying some needed fixes. He noted that the recently-issued U.S. Fish and Wildlife Service Director's Order 210 (Director's Order) would further tighten the rules concerning ivory entering and exiting the United States. He added that the Service would now be moving to a regulatory rulemaking process, the goal of which would be to clarify and narrow the scope of what is exempt. Mr. Arroyo also acknowledged that the issue of antiques would be challenging, particularly in light of the fact that there have been cases where contemporary ivory has been disguised as antique. He concluded by noting that there will be opportunities for the public to participate in the rulemaking process, through public comment periods.

Mr. Arroyo invited Craig Hoover, Chief, Wildlife Trade and Conservation Branch, Division of Management Authority, U.S. Fish and Wildlife Service, to provide additional information. Mr. Hoover noted that the National Strategy lays out a series of administrative actions that Service will pursue, including a near total ban on trade in ivory and rhinoceros horn. He noted that the Director's Order clarifies the scope of the African Elephant Conservation Act moratorium, by prohibiting all commercial ivory imports, regardless of age, with very limited exceptions. He added that the Director's Order also clarifies that the Service will fully enforce the ESA definition of antique. Mr. Hoover noted that the Service will be working on several other administrative actions in the coming weeks, including publishing a *Final Rule* amending the U.S. regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which will clarify what individuals can and cannot do with products containing species listed in CITES Appendix I, and making changes to the African elephant *Special Rule* under the ESA. Included in these intended changes is enactment of the standard prohibitions under the ESA, the most significant of which would be a prohibition on interstate commerce in ivory. Mr. Hoover reported that the changes would also address U.S. regulations concerning trade in antiques that include ivory and a proposal on the limitation on imports of African elephant sport-hunted trophies to two per year. He concluded by noting that the Service anticipates publishing one or more *Proposed Rules* on these matters in June 2014.

Mr. Hayes read for the record a letter from Senator Dianne Feinstein to Judith McHale. He then asked for reactions from the other Council members to the report of the legal frameworks and reform subcommittee. Patrick Bergin noted that the four provisions outlined in Mr. Asner's remarks do just what the Council is trying to accomplish. He noted that the United States has made bold recent steps to destroy its elephant ivory stockpile, and that action was resulting in a ripple effect in other parts of the world. He added that he thinks that a tightening of controls over ivory will have a ripple effect as well. He noted that at the recent London Conference on the Illegal Wildlife Trade, held in February 2014, governments acknowledged the need to tighten controls on specimens such as ivory. Mr. Bergin noted that Kenya has recently strengthened its penalties for wildlife crimes. John Webb added that the suggested restitution reforms are an example of the means by which governments can "disgorge the ill-gotten gains of wildlife trafficking." He concluded by noting that many of the actions being discussed will come out on a staggered timeline, with the actions requiring a Congressional decision taking much more time than some other available actions.

Mr. Hayes added that the enhanced enforcement tools discussed by Mr. Asner would enable law enforcement authorities to pursue the criminal syndicates involved in this activity and not ensnare well-meaning citizens who are trying to understand what the ivory ban means to them. He also noted that international wildlife trafficking has become an enormous global criminal activity, with 30,000 or more elephants poached in Africa in 2013. He noted a similar situation with over 1,000 rhinoceroses killed last year in South Africa alone. He asserted that the United States is a transshipment point for wildlife trafficking and also a place where banks may be involved. Building on from Mr. Webb's points, he noted that it will be important to think about how best to stage activities. Cristián Samper added that one of the things we have seen, particularly in African countries, is the opportunity for the United States to provide technical advice. Mr. Asner noted that the U.S. Department of Justice (DOJ) has done a tremendous amount of work in this area already, and that as the world community starts following the U.S. leadership, there will automatically be more communication among law enforcement communities. Dr. Samper responded that many countries around the world do not have the necessary legal framework to effectively tackle these issues, and it will be important to assist those countries. Carter Roberts reinforced the importance of the U.S. Government taking a strong role on this issue. He noted that Nepal reported zero poaching for 2013, and that communities in Nepal receive half of the park revenues and Nepal also has strong law enforcement. Mr. Roberts noted that such programs have long been supported the U.S. Agency for International Development (USAID) and the Service. He concluded by noting that people on the ground in Nepal will say that the biggest part of this success has been in bringing the dealers in Kathmandu to curb. David Barron supported Mr. Asner's recommendations on restitution, noting that ultimately, everything comes down to economics. He added that Senator Feinstein is working on a bill on this issue, and is engaging her Republicans colleagues. He concluded by acknowledging that there are many people in the United States who own legal ivory, and the Government needs to ensure that its actions do not penalize innocent people. Mr. Hayes concluded the discussion by noting that the Council will be posting all significant public comments that it receives on its website.

Enforcement subcommittee

Mr. Webb reported on the results of discussions within the enforcement subcommittee. Other members of the subcommittee are Crawford Allan, Dr. Samper, and Mr. Hayes. Mr. Webb reported that in trying to identify several different enforcement agenda items, the subcommittee first looked at the types and severity of punishments currently available for addressing wildlife crime. He noted that the subcommittee looked at prosecutions by the Service, the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) as well as sentencing guidelines. He reported that although sentencing guidelines were once mandatory, they are now merely advisory and the longest sentence for a wildlife crime alone was two months incarceration. He reported that the subcommittee believes that the Service's case selection criteria need to be reviewed and judges need to be educated concerning the serious nature of such crimes, noting that the only time judges really get to hear the consequences of wildlife trafficking is during the sentencing hearings. He stressed the importance of expanding undercover investigations and targeting known kingpins as well as the use of controlled delivery to track contraband to intended recipient. He also reported that the subcommittee discussed the importance of appropriate funding and staffing levels for the Service, NOAA, and APHIS. Mr. Webb stressed the importance of effective CITES implementation worldwide, noting that many

successful CITES-related prosecutions in the United States have come from coupling the offense with violations of the U.S. Smuggling Statute (Title 18). He also stressed the importance of encouraging all CITES Parties to ensure that their implementing legislation includes appropriate sanctions. He stressed the importance of improving the capacity of foreign governments to fight wildlife trafficking and building effective partnerships and cooperation among governments. He noted that an important example of such cooperation is in the establishment of Wildlife Enforcement Networks (WENs) in several regions of the world. He added that it is important to build a coordinated strategy across all relevant agencies in a country, and noted the importance in continuing to work on multi-national and transnational cases such as the recently-concluded Operation Cobra. Mr. Webb added that another useful tool in combatting wildlife crime is to place wildlife experts and wildlife legal attaches in U.S. Embassies, where they can provide legal training as well as anti-corruption and legal advice. He concluded by noting that these actions will need a solid foundation in the United States, which means prosecuting more than 100 people per year for wildlife crimes.

Mr. Hayes agreed with the importance of going after the kingpins in the organized criminal syndicates that are behind much of the global wildlife crime. He cited the following key elements from a recently declassified report from 2012: a conclusion that criminal elements of all kinds, including terrorists and rogue government personnel, are involved in the movement of elephant ivory and rhinoceros horn, and confirmation from the intelligence community of the tie between poaching and terrorist groups. He added that the Executive Order explicitly asks the Task Force to evaluate whether it would be appropriate to including wildlife trafficking in the strategy to combat transnational organized crime, which currently includes arms, human, and drug trafficking. Mr. Bergin noted for example, when it comes to dismantling these criminal networks such as the illegal ivory trade in China, there are as few as five to seven organizations involved at the top. He asserted that while it is important to address the kingpins running operations at the very top, it is also important to go after some of the more significant players along the chain. He added that it will be important to address priority countries, which are often countries with the weakest rule of law, and find choke points for transshipment of illegal wildlife. Dr. Samper shared his observations from a recent trip to Tanzania, concluding that the take home message is that if we focus on the resources, they can and will recover. He added that it is important to stop the poaching in the meantime, but in the longer term, it will be important to focus on demand reduction efforts. He reported that during a meeting with officials from the U.S. Embassy, it was heartening to hear that they are taking the National Strategy seriously and discussing critical elements of it with Tanzanian officials. He added that CITES has taken some aggressive steps to address elephant poaching and ivory trafficking and that eight countries have been instructed to provide reports for the next meeting of the CITES Standing Committee, to be held in July 2014, on their elephant ivory action plans. Mr. Asner added that it is clear that corruption is a critical concern in these issues and that DOJ has had astonishing success in the anti-corruption field, with other countries coming on line with improving their anti-corruption tools. He noted that currently anti-corruption is handled within DOJ through ad hoc coordination between the corruption division and the environment division and that it will be important to institutionalize that coordination between these groups. Mr. Roberts noted his concern that the United States has such a poor sentencing record for wildlife crime and expressed his hope that the coming years would bring some hard hitting actions. He added that is it a very real possibility that at the CITES Standing Committee meeting in July, countries that have failed to make progress on their ivory action plans could be sanctioned for that failure. He also stressed the

importance of being clear minded about how we use tools such as the Pelly Amendment to the Fishermen's Protective Act. Mr. Hayes concluded the discussion by noting the importance of understanding the local conditions and directing resources to where they can be most effective. He asked his fellow members if there was something the Council could do to advise where U.S. investments would be most effective.

Communication & Advocacy subcommittee

The report by the Subcommittee on Communication/Advocacy was presented by Carter Roberts and Patrick Bergin. The Subcommittee has three initial recommendations:

- Use the convening power of the U.S. Government to convene a symposium or summit on demand side reduction. The symposium or summit would consist of an array of academia, the private sector, and experts in social marketing.
- Convene a complimentary roundtable of major players from the private sector. The major players from industry (both individuals and businesses) include, for example, tourism, travel, shipping, and aviation.
- Use the resources of the State Department, especially the embassies, to engage both public officials and civil society in other countries through long-term dialogues, exchanges, and events to drive the reduction in demand. This activity potentially could provide important results in demand reduction and should include a working group on this topic established in the State Department.

The subcommittee, citing several recent wildlife trafficking control initiatives, commented on the importance of coordinating demand reduction efforts across NGOs, the private sector, governments, and other entities, as well as the use of embassies in this regard. These efforts should be mapped well in advance and actions coordinated to ensure the continuity of wildlife trafficking control activities.

A related topic is how the national strategy is promoted or implemented in other countries. Given the different levels of U.S. presence in different countries, as well as the differing needs of these countries (for example, law enforcement officials or border patrols), U.S. officials may need to use a wide variety of actions or assistance.

Mr. Samper, citing recent successes to change behavior through public service announcements and the involvement of celebrities (for example, anti-smoking programs), suggested that the media and communications industries should also be included among the list of major players from the private sector to be engaged in wildlife trafficking control and demand side reduction. Embassy officials should also be involved in these activities at the country level, as well as with other government organizations, such as the European Union that is also working of wildlife trafficking issues.

Continuing, Mr. Roberts indicated that in order to move beyond these campaigns, which have been very successful at raising public awareness about different issues, we need to engage or convene

social behavior change experts to examine in detail this process and to provide guidance to the council on wildlife demand reduction activities.

Hayes also highlighted the importance of demand reduction and suggested that wildlife trafficking control programs focused solely on law enforcement would not be successful. He cited the recent change by Chinese officials not to serve shark fin soup at diplomatic functions anymore.

As another example of behavior change, Mr. Asner mentioned the highly successful anti-littering campaign that was conducted several years ago. As a result, children today frequently become quite upset, for example, if they see someone throw a cigarette on the sidewalk. He then suggested that a U.S. campaign to put wildlife crimes on par with money laundering or other Federal crimes could have a strong impact and change public behavior throughout the world.

Citing some recent wildlife examples in Africa, Mr. Hayes commented on the importance of building networks between people to make them constituents for conservation. Mr. Hayes also highlighted the need to be reaching out to a younger generation, especially young Asians.

Following up on earlier comments, Mr. Roberts cautioned council members not to underestimate the importance of American cultural importance around the world. He also called the attention of council members to the importance of cooperation between government, civil society, and the private sector to create a very clever campaign or an initiative that not only raises public awareness, but also provides incentives for people to change their behavior. The key is cooperation, not just one player acting alone. In this regard, the Subcommittee on Communications/Advocacy again recommended that the U.S. Government convene a symposium that involves the several major players. In their opinion, such an event might be a fertile ground to generate creative ideas to address wildlife trafficking issues.

Subcommittee - Public/Private Partnerships

The Public/Private Partnerships Subcommittee, Chaired by Mr. Hayes, recognizes that under the National Strategy the US government - the administration - is looking to this Advisory Council to help facilitate discussions between the private sector and the Government - to involve all of civil society with the hope of clearer rules, spreading to other wildlife not just elephants.

Mr. Hayes noted that, where appropriate, it was critical to build relationships with with non-governmental organizations and the private sector to share and implement best practices that support sustainable supply chains and avoid contributions to illegal wildlife trade. Mr. Hayes noted that there are some industries that make sense to work with initially which are connected to wildlife trade, but noted that he hoped that this cooperative framework could serve as a template for working with other industries in the future once the short term issues of ivory and rhino horn had been addressed.

Mr. Hayes noted that the Council at large wanted to further assist in clarifying the rules for the public at large, seeking to get the bad guys and not the good guys; the bad guys who are trading illegally and taking advantage of ambiguity and loopholes to cover their illegal activity.

Mr. Hayes stated that the Subcommittee had four principle recommendations for implementing public/private partnerships, initially developing ideas with industry leaders in the transportation sector, tourism sector, and the retail sector. They were to –

- Develop potential action and appropriate procedures for their industry – such as codes of conduct and voluntary guidelines. Mr. Hayes noted that obvious examples for opportunity could be found in the transportation industry. Airlines, global airlines, shippers. He noted that this industry seemed particularly eager to engage in assisting the federal government. Mr. Hayes also noted that retailers could put in place voluntary approaches and codes of conduct that they could then share with their customers and others to provide assurances that they are not participating and the added side benefit of this potentially is an outreach to the customer bases of these companies.
- Develop appropriate procedures within their industry to ensure they are not unwittingly helping illegal trade. Mr. Hayes noted that it would be important to help coordinate some of the activities that NGOs are undertaking and also private philanthropists are undertaking with the government activities. He further indicated that it may be possible to gather helpful insights from the companies that are in international business, in terms of how to root out where the illegal activity is occurring.
- Encourage the Task Force to convene a meeting of high-level executives throughout the industries mentioned above and others, including, but not limited to, the pet trade industry, to discuss where collaborative opportunities may exist. Mr. Hayes noted that some companies have already taken voluntary measures to curb ivory trade, including Tiffany's and eBay.

Mr. Hayes then posed several questions for the rest of the Council to respond to:

- How do we facilitate the private sector, which involved the general public, interested industries, NGOs, philanthropists - how do we facilitate that sector, understanding where they can best help the government achieve success?
- Where are the needs - where can the other interested parties monetary resources be most effective?

In response, Mr. Asner commented that he agreed with Mr. Hayes' comments and ideas. He added that it may be fruitful to include the fashion and food industries as a part of this endeavor, noting that the seafood industry has had numerous issues that could be engaged. He noted that the 'good actors' in the seafood industry often knew who the bad actors were and

would be happy to collaborate with enforcement efforts, as illegal wildlife trade undercuts the market.

Mr. Bergin noted that it would be advantageous to create a matrix of overlapping efforts between enforcement and private sector efforts, using SGS Swissport as an example of where this overlap could be effective in bringing additional transparency.

Mr. Roberts concurred with what was said by the Council. Indicating that IUU fishing, unregulated, illegal, unreported fishing, was certainly a place where the Council should engage and where much work had already been done. He noted that port-safe agreements around the world really govern in terms of monitoring and enforcement at the key ports. He went on to note that what is almost always lacking is capacity to do monitoring and enforcement and that this capacity is being built up strategically in the fishing industry and key ports. He indicated that the Task Force might look at one of the key ports in the wildlife trade and consider adding resources here as well. Lastly, Mr. Roberts noted that voluntary self-monitoring was a critical component to what was successful with the fishing industry and strongly agreed that this model could be exported more broadly to wildlife trafficking.

Mr. Samper followed-up, stating that he agreed strongly with the Council, in that guidance to industries should be voluntary, but he also pointed out that the Council should be mindful that while the current focus remains on the ivory crisis, illegal wildlife trafficking touches many, many groups of animals, plants in all eco systems in many parts of the world. Fresh water fish issues with the pet industry are devastating populations, though they're a small market.

Mr. Webb noted that he too agreed with the discussion about good actors in industries being willing to assist in combatting wildlife trafficking and cracking down on bad actors. He noted issues with spiny lobster, an industry worth \$16 billion in which a company was very upset regarding the illegal harvest of lobsters and was very cooperative with investigators. Mr. Webb noted that one of the biggest challenges however is that in working internationally with foreign embassies, there's a great deal of turn-over in leadership which can make international cooperative enforcement efforts more difficult. It is for this reason that Mr. Webb noted it's important NGOs come to the table with foreign governments and offer to work hand-in-hand, to spread the expertise and responsibility of projects.

DRAFT