

Federal Advisory Council on Wildlife Trafficking

June 9, 2014

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Bldg.
Washington, D.C. 20510

Senator Lindsey Graham
United States Senate
290 Russell Senate Office Bldg.
Washington, D.C. 20510

Re: Advisory Council on Wildlife Trafficking

Dear Senators Feinstein and Graham:

We are submitting this letter on behalf of the President's Advisory Council on Wildlife Trafficking (Advisory Council), which was established pursuant to Executive Order 13648 of July 1, 2013 on Combating Wildlife Trafficking. The positions set forth in this letter were developed by the Advisory Council's Legal Reform Subcommittee, which includes Marcus Asner, Susan Lieberman, David Barron and Tod Cohen. The full Advisory Council discussed and endorsed the points included herein in a public meeting held on June 9, 2014.

The Advisory Council appreciates your leadership on addressing the international wildlife trafficking crisis, and your support for strengthening the legal tools available to U.S. authorities to bring those who are involved in illegal trafficking activities to justice. We write briefly to weigh in on a few key points that we hope will be included in the legislation that we understand you are preparing for Congressional action.

- Including Wildlife Trafficking Violations As Predicates Under the Racketeering and Money Laundering Statutes

We understand that your draft legislation would modify federal criminal law so that wildlife trafficking violations would serve as predicate violations under (i) the Travel Act, 18 USC 1952, (ii) the federal Money Laundering statutes, 18 USC 1956, and (iii) the Racketeering Influenced and Corrupt Organization Act, 18 USC 1961-1968.

We support these proposed provisions. The modifications would provide federal law enforcement with additional tools in the fight against wildlife trafficking, both by expanding the reach of federal law enforcement jurisdiction in this area, and by increasing possible penalties. The legislation also would send an important message, because it would signal that the United States considers wildlife trafficking a serious crime, in the same general band as a wide range of other federal crimes, ranging from wire fraud to Interstate Transportation of Stolen Property to narcotics trafficking, and set an example that will influence other countries to do the same. The United States has supported efforts through United Nations agencies (such as the United Nations Organizations on Drugs and Organized Crime) and other fora to have wildlife trafficking recognized as serious crime, and we believe that legislation here in the U.S. should reflect this.

- Enhance the Federal Restitution Statutes

At present, the main federal criminal restitution statutes, 18 USC 3663 and 3663A, provide that defendants convicted of a wide range of federal crimes must pay compensation to their victims. A victim's right to "full and timely restitution" is codified in Crime Victims' Rights Act of 2004, 18 USC 3771. The statutory scheme reflects a clear intent that, whenever possible, courts should make every effort to ensure that victims of a federal crime should receive full compensation for the harm suffered.

At present, federal criminal law fails to include wildlife crimes as predicate offenses supporting an order of restitution under 18 USC 3663 and 3663A. This gap in the federal restitution scheme can be remedied with a simple modification to the statutory language. We urge you to include this modification in your proposed legislation. More specifically, we recommend that 18 USC 3663(a)(1)(A) be amended by striking the word "or" before the phrase "section 5124, 46312, 46502, or 46504 of title 49" and adding the following language before the phrase "other than an offense described in section 3663A(c)":

"or any act that is a violation of section 2203 of the African Elephant Conservation Act (16 U.S.C. 4223), a violation of section 7 of the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5305a), or a felony violation of section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372),"

We also recommend that a parallel change can be made to 18 USC 3663A by adding the language bolded above as a new section, 18 USC 3663A(c)(1)(A)(v).

Modifying the restitution statutes as suggested would serve an important role in the fight against wildlife trafficking. The proposed changes would help ensure that victims receive compensation in appropriate cases, reflecting the reality that wildlife has a real, economic value. Affording victims their right to restitution also will better incentivize victims to work with law enforcement in the fight against trafficking. Finally, much like the changes contemplated to the Travel Act, the

money laundering statutes and RICO, modifying the restitution statutes as suggested will signal that the United States considers wildlife trafficking a serious crime, in the same general band as a wide range of other federal crimes.

We understand that there may well be situations where there is no identifiable victim of a particular wildlife crime, or where restitution may not be appropriate under the circumstances of the particular case. Under the proposed amendments, the court would not be required to order restitution in such circumstances.

- Wiretapping Statutes

We understand that your draft legislation would modify federal criminal law so that wildlife trafficking violations would serve as predicate violations under the federal wiretap statute, 18 USC 2516. We support this proposed provision because it would provide federal law enforcement with a powerful tool in the fight against wildlife trafficking. Moreover, the procedures governing wiretaps in federal criminal cases are well established, and work extremely well to protect the civil liberties of innocent parties, while helping law enforcement in its efforts to disrupt criminal networks.

We applaud your important work in this area, and thank you in advance for your consideration of this letter.

Sincerely,



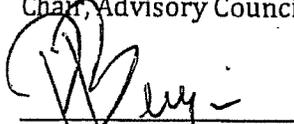
Marcus Asner,
Co-Chair, Law Reform
Subcommittee



David Barron
Law Reform
Subcommittee



Judith McHale
Chair, Advisory Council



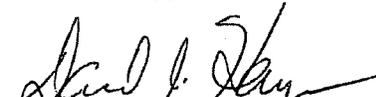
Patrick J. Bergin



Susan Lieberman
Co-Chair, Law Reform
Subcommittee



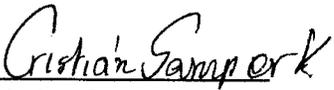
Tod Cohen
Law Reform
Subcommittee

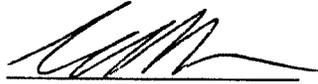


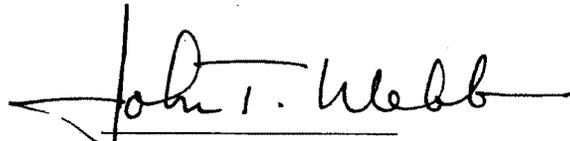
David J. Hayes,
Vice-Chair, Advisory Council



Carter S. Roberts


Cristián Samper


Crawford Allen


John T. Webb

Stanley T Asah Digitally signed by Stanley T Asah
DN: cn=Stanley T Asah, o=UW, ou=SEPS,
email=stasah@uw.edu, c=US
Date: 2014.06.10 17:22:22 -0700
Stanley T. Asah