

Stanford Law School

Comments and Recommendations
for the
Advisory Council on Wildlife Trafficking

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Introduction

Stanford Law School Policy Lab 413P has developed the analysis and recommendations included in this submittal to provide input to the Wildlife Trafficking Advisory Council as it works with the President's Wildlife Trafficking Task Force in implementing the National Strategy on Wildlife Trafficking. The White House released the National Strategy document on February 11, 2014, pursuant to the President's Executive Order on Combatting Wildlife Trafficking which was issued, in turn, on July 1, 2013. Students involved in Policy Lab 413P include law students and graduate students in African Studies and Earth Systems.

This submittal addresses several of the key implementation issues that are before Advisory Council and, through the Council, the Task Force. It does not attempt to cover all issues. In that regard, the submittal focuses primarily on the current exploitation of two of Africa's iconic species -- the elephant and the rhinoceros. This emphasis is well founded given that elephant and rhino poaching has accelerated so dramatically in recent years that it threatens the continued existence of these species in the wild, and the tie-in between the criminal syndicates that are engaging in illegal trade in ivory and rhino horn and our national security interests, due to the syndicates' fueling of instability, corruption, armed conflict, and terrorism.

Although the National Strategy and this paper focus primarily on ivory and rhino horn trafficking, it is important to keep in mind that the President's Executive Order extends beyond trafficking in these wildlife parts. The history and circumstances of trafficking in other wildlife parts -- such as big cats, turtles, sharks and the like -- will differ with each species and wildlife parts involved. Additional research and analysis will be needed to develop species-specific action plans that incorporate the historical and contemporary contexts under which protection for those species has proved most effective.

The analysis and recommendations included in this submittal are divided into six major areas. An Executive Summary, presented in the form of an annotated table of contents for the submittal, follows. The six major areas covered in this submittal follows:

1. Background and History.
2. U.S. Enforcement of Wildlife Trafficking Laws.
3. U.S. Engagement in International Efforts to Curb Illegal Wildlife Trafficking.
4. Participating in International Efforts to Combat Rhino Horn Trafficking.
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EXECUTIVE SUMMARY

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- B. The U.S. Should Enhance and Vigorously Enforce of Its Wildlife Laws to Help Address the Wildlife Trafficking Crisis
- C. Background: Pertinent Aspects of Current U.S. Wildlife Trafficking Laws and Related Recommendations
- D. Recommended Upgrades to U.S. Wildlife Trafficking Laws
 - Enhancing the U.S. Ban on Commercial Trade in Ivory

We commend the President's announcement that administrative steps will be taken by the U.S. Fish & Wildlife Service (FWS) to tighten up the ban on the commercial sale of ivory in the United States. We recommend that FWS complete its administrative processes to close the current loopholes as soon as practicable, given the seriousness of the current elephant crisis. We specifically request that FWS provide the Advisory Council with a progress report each quarter and that the Service endeavor to complete the required rulemaking(s) within 12 to 18 months.

- Toughening Up Fines and Penalties under the Lacey Act and the Endangered Species Act

We recommend that the United States Department of Justice issue updated guidance to prosecutors and recommended sentences to courts that reflect the seriousness of wildlife trafficking crimes.

We recommend amending the Lacey Act to make it easier to prosecute and penalize wildlife traffickers, including by adding conspiracy as a specific predicate offense to the Lacey Act.

We recommend that the Administration undertake a study to determine the level of fines under the ESA necessary to effectively deter illegal wildlife traffickers. We anticipate that such a study will recommend that Congress increase ESA penalties from misdemeanors to felonies to better deter wildlife trafficking crime, specifically those that violate CITES, and provide appropriate penalties when they occur.

- Bolster the Use of U.S. Money Laundering Tools to Stop Wildlife Trafficking Syndicates

The National Strategy calls on Congress to consider legislation to recognize trafficking crimes as predicate offenses for money laundering. Toward that end, we recommend that the Department of Justice request Congress to amend 18 U.S.C. § 1956(c)(7), which defines the predicate "specified unlawful activit[ies]" triggering eligibility for money laundering prosecution, to include wildlife crimes such as those codified in the ESA and Lacey Act.

We recommend that the Treasury Department's authority to trace funds related to counterterrorism activities be explicitly extended to the entire chain of wildlife trafficking activity, including upstream poaching activity itself, given the evidence that international crime syndicates involved in wildlife trafficking are fueling armed conflicts and terrorist groups.

We recommend that the Administration support Senate bill 1465, the “Incorporation Transparency and Law Enforcement Assistance Act.” This legislation would require persons who form corporations in the United States to disclose the beneficial owners of the corporations that they have formed and would require states to establish registries with this information, which could be accessed by law enforcement and tax authorities.

- Apply the Racketeer Influenced and Corrupt Organizations Act to Wildlife Trafficking Crimes

We recommend that the Administration petition Congress to amend 18 U.S.C. § 1961(1) to make wildlife trafficking a “racketeering activity.” Doing so would provide federal prosecutors with new tools to stop wildlife traffickers.

- Amend the Travel Act and Expand Restitution Authorities to Apply to Wildlife Trafficking Offenses

We recommend that the Administration petition Congress to add wildlife trafficking as an “unlawful activity” to the Travel Act under 18 U.S.C. § 1952(b). By making this change, wildlife traffickers who travel or use the mails in interstate or foreign commerce could be punished with increased fines and prison sentences of up to twenty years.

We also recommend that the list of crimes covered by the Mandatory Restitution Act of 1996 be expanded to include the Lacey Act, so seeking restitution could become standard practice in wildlife trafficking cases, resulting in both harsher monetary penalties for convicted traffickers and greater resources for the foreign nations charged with protecting endangered wildlife.

- Providing More Financial Support for U.S. Enforcement Efforts

We recommend that the Advisory Council work with the Task Force and identify a cross-agency wildlife trafficking budget that is sufficient to enable the U.S. to be a world leader in detecting and prosecuting wildlife trafficking crimes.

III. U.S. Engagement in International Efforts to Curb Illegal Wildlife Trafficking

A. Enhancing Enforcement in Range Nations

- Parameters for Potential U.S. Military Assistance in Anti-Poaching Efforts
- Closing the Authority Gap

We recommend that AFRICOM policy that restricts providing training and equipment to non-military personnel should be amended and/or clarified to allow for such assistance in those cases in which there is evidence that traffickers are connected with armed conflicts and/or terrorist groups. In addition, we recommend that Congress go to the heart of the matter and provide the U.S. military with discretionary authority to provide training and equipment to both civilian and military law enforcement personnel in support of anti-poaching initiatives in range countries.

- Training Range Country Prosecutors and Judges

We recommend that the Administration evaluate how the U.S. and other nations might help address this issue, through additional legal education and training programs for judges and prosecutors.

B. Beefing Up International Enforcement Efforts Against Wildlife Trafficking Kingpins

1. Implementing the President’s Transnational Organized Crime Strategy

We recommend that the specific steps laid out by the President’s 2011 Strategy to Combat Transnational Organized Crime (TOC) be vigorously applied to wildlife trafficking. We believe that going after major trafficker kingpins will be one of the most effective strategies in ending the current elephant and rhino poaching crisis.

2. Increasing the Use of the Transnational Organized Crime Reward Program
3. Enhancing International Law Enforcement Cooperative Activities
4. Imposing Sanctions Against Non-Compliant Nations

We recommend that the United States develop and implement a strategy under the CITES framework to impose serious sanctions against nations that are not living up to their responsibilities under CITES.

- Potential Trade Sanctions Under CITES for Non-Compliant Wildlife Trafficking Nations

We recommend that the U.S. CITES delegation make its intentions clear to aggressively pursue economic sanctions against countries that are not taking strong action to prevent the illegal export, transshipment or import of wildlife products under CITES.

- Potential Use of the Pelly Amendment

We recommend that United States authorities give careful consideration to persuasive Pelly Amendment petitions and seriously consider relying on Pelly Amendment authority to impose trade sanctions on countries that are violating CITES – particularly if the CITES Secretariat is slow to recommend sanctions against countries that are not adequately addressing trafficking problems.

IV. Participating in International Efforts to Combat Rhino Horn Trafficking

- Lack of Inherent Value in Rhino Horn

Given that rhino horn has no inherent value, and is being sold illegally and under a false pretense, there is a powerful inherent reason to discourage any commercial trade in rhino horn. With the black market commanding prices as high as \$60,000 for a large rhino horn, and fueling

the destructive killing of an alarming number of the remaining rhinos in the wild, there is an even more powerful rationale for enforcing the current ban on the export and import of rhino horn.

- Regulatory Restrictions on Commercial Trade in Rhino Horn
 - Hunting Allowances

We recommend that range countries ensure that the limited hunting allowances allowed for rhinos are not used as a mechanism to market rhino horn. Toward that end, the Administration should advocate that where CITES allows for limited hunting of listed species, host nations should adopt an integrated, international hunting permit system that regulates hunting and also effectively documents, tracks and manages trophies.

- Potential Legalization of Trading in Rhino Horn

Because South African interests are expected to push for a change in CITES policy, we recommend that before the next CITES CoP, the United States and/or the CITES Secretariat should commission an analysis of the potential impacts associated with lifting the trade ban on rhino horn and evaluate the likelihood of whether lifting the ban would reduce the demand for rhino horn and, as a result, reduce poaching pressures on rhinos in the wild.

V. Institutional Initiatives to Help Address the Wildlife Trafficking Crisis

A. Pursuing Public/Private Partnerships with the Business Community

We recommend that the Advisory Council work with the Task Force to enlist businesses in anti-trafficking activities. The Advisory Council should facilitate meetings between company executives and high-level government officials to discuss how best to attack the issue. Growing out of such meetings, the Advisory Council should work with leading companies and encourage them to develop voluntary codes of conduct to ensure that they are not assisting in illegal trafficking, and to alert customers, suppliers and others in the value chain to do the same. Companies should use their voices in the marketplace to draw attention to the wildlife trafficking crisis and encourage others to join in their efforts to stop the scourge of wildlife trafficking.

B. Helping to Coordinate the Government's Anti-Trafficking Efforts With NGOs and other Privately-Financed Initiatives

The Administration should provide more transparency regarding the government's anti-trafficking priorities and granting opportunities. As part of this effort, we recommend that the Task Force set up a cross-agency web site to identify granting opportunities and facilitate coordination with NGOs and private funders.

Facilitated by the Advisory Council, the Administration should identify areas in which additional privately funded assistance could materially advance anti-trafficking activities. In addition, the Administration should facilitate country-level meetings among NGOs and private funders with

relevant US embassy personnel and host country officials to discuss and coordinate anti-trafficking efforts.

C. Supporting Community-Based Wildlife Protection Models

We recommend that the Administration continue to support community-based conservation efforts as an important tool to attack one of the root causes of wildlife trafficking. Because of the varying levels of success of different community-based wildlife conservation models, we recommend that the Administration undertake an evaluation of the effectiveness of various models that it is supporting and that this review be coordinated, where possible, with the host government; that it consult with experienced, in-country organizations involved with the administration of community-based conservation programs; and that it take steps to increase support for successful models, and remove support from failing efforts.

1. Case histories

- Community Conservancies in Namibia
- Northern Rangelands Trust in Kenya
- Wildlife Management Areas in Tanzania
- CAMPFIRE in Zimbabwe

2. Key Criteria for Success

- Community Participation; Economic Benefit
- Damage Compensation; Transparency and Accountability

D. Establishing an Africa-Based Information Hub

We recommend that the international community redouble its efforts to obtain and disseminate pertinent information about the wildlife trafficking crisis by establishing an Africa-based information hub that will collect, oversee and disseminate key information about wildlife populations and wildlife trafficking. We suggest that a leading African universit[ies] and/or data center[s] be selected to host the proposed information hub, and that the operations of the hub be overseen by a panel of respected African leaders and third party experts who will ensure that appropriate protocols are utilized when collecting information, without interference by governmental authorities.

VI. Addressing Demand is Essential to an Effective Anti-Trafficking Strategy

A. Media Campaigns Can Impact Consumers' Attitudes & Behavior

B. Focusing on a Key Market: China

C. The First Step is Understanding *Who* is Buying Ivory in China & *Why*

- *Who* is Buying Ivory in China?
- *Why* Are They Buying Ivory?

D. Ignorance & Apathy Are Key Barriers to Changing Consumers' Attitudes & Behavior

- Ignorance
- Apathy

E. Lessons Learned from Previous Campaigns Can Help Guide Future Efforts

1. Past Ivory Campaigns
2. Shark Fin Soup in China
3. Dolphin Slaughter in Japan
4. Consumption of Dogs & Cat Meat in China

F. Recommendations for Demand Reduction Initiatives in China

Efforts to reduce demand for ivory in China and other consumer nations must be a key element of any effective anti-trafficking strategy. Market research should be undertaken to ensure effective messaging and, if possible, the efforts of NGOs and other parties should be coordinated. The Advisory Council can and should play an important role in coordinating and contributing to demand-reduction strategies like these in the future.

General Recommendations

- 1) *Devote substantial financial and intellectual resources to the demand reduction effort.*
- 2) *Invest in market research to understand what drives consumer demand in different markets and identify the methods that will be most successful at reducing demand within each consumer segment.*
- 3) *We commend the Advisory Council's creation of a subcommittee devoted to advocacy and communications. Future tasks of the subcommittee might include the following:*
 - *Ensuring that demand-side strategies receive the attention and resources they deserve, as per the National Strategy Document.*
 - *Working with the appropriate government agencies and private organizations to help commission market research on effective demand reduction strategies.*
 - *Partnering with private entities and/or governments to develop media and communications campaigns in demand-side countries.*

- *Serving as a “clearinghouse” to avoid overlapping and/or inconsistent messaging across different entities.*

G. Reducing Demand for Rhino Horn

We recommend that a significant public education and behavior change-oriented campaign be undertaken to reduce the demand for rhino horn in Vietnam and China. Many of the techniques recommended in connection with the anti-ivory campaign are equally applicable to an anti-horn campaign, including the engagement of leaders of the country, celebrities, and major business interests to convince and incentivize Asian countries with high demand for rhino horn to ban the product from local markets.

H. Using Demand Reduction Media Strategies in Range Countries

We recommend that media strategies drawing attention to the wildlife trafficking crisis not be limited to demand-side nations, but also be used in range nations which are bearing the brunt of poaching crisis and which have the most to lose if poaching is not brought under control.

I. Background and History

A. Key Ingredients to Prior Success in Combating Wildlife Trafficking: Banning International Trade in Ivory and Rhino Horn, Combined with Strong International Pressure and Effective Enforcement

The trade in illegal elephant ivory and rhino horn previously reached a crisis point in the late 1980s and early 1990s. Importantly, the international community was able to stem the destruction of large numbers of elephants in the early 1990s as a result of a combination of factors. It is important that current implementation efforts take into account the historical lessons provided by these prior efforts.

- **The 1989 Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹ Ban on the International Trade of Ivory and the 1977 CITES Ban on the International Trade of Rhino Horn**

The poaching crisis of the 1980s saw one of the largest elephant massacres in history play out across much of the African continent. Aerial censusing of continent-wide elephant populations performed by the African Elephant Specialist Group of the International Union for the Conservation of Nature (IUCN) estimated that there were approximately 1.34 million elephants in all range states in 1976.² Estimates performed in 1989 suggested that the total population had dropped to approximately 608,000 individuals.³ Thus, it appeared that within the span of only 10 years, an average of 70,000 elephants had been killed each year, leading to a halving of the total continental population.⁴ These startling numbers combined with heavy lobbying helped to move the international community – acting through the operation of the CITES Convention -- to ban international commercial trade in ivory.⁵

By most objective measures, the CITES ban, which was put in place in 1989 and which was accompanied by (and arguably the result of) significant international attention that had been brought to bear on the crisis, was effective in stopping the massive killings of elephants. A quantitative analysis performed by Stiles⁶ indicated that there was substantial evidence that the 1989 ban on the sale of ivory led to lowering poaching levels and the scale of ivory markets in general, but that the level of the impact varied from country to country. Similar economic modeling performed by Lemieux and Clarke⁷ suggested that the disruption of trade created by

¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Convention Text." Accessed

² Douglas-Hamilton, I. (1979) The African elephant survey and conservation programme. Final report to WWF/NYZS/IUCN, Nairobi, Kenya *in* Stiles, Daniel. "The ivory trade and elephant conservation." *Environmental Conservation* 31, no. 04 (2004): 309-321.

³ Cobb, S., and D. Western. "The ivory trade and the future of the African elephant." *Pachyderm* 12 (1989): 32-27.

⁴ *Id.*

⁵ The transfer of both sub-species African elephant (*Loxodonta africana*) to CITES Appendix I effectively restricted the commercial trade in ivory. Text to the resolution moving the species to Appendix I can be found in the following link: <http://cites.org/sites/default/files/eng/cop/07/E07-Appendices.pdf>

⁶ *Id.*

⁷ Lemieux, Andrew M., and Ronald V. Clarke. "The international ban on ivory sales and its effects on elephant poaching in Africa." *British Journal of Criminology* 49, no. 4 (2009): 451-471.

the CITES ban helped to reduce the prevalence of illegal hunting and was at least partially responsible for reversing total species declines.

More importantly however, the reports by Stiles and by Lemieux and Clarke indicate that one of the largest factors leading to the variation in the success of curtailing poaching within country borders was the presence or absence of unregulated domestic ivory trade industries.⁸⁹ Additional factors that seemed to have the greatest impacts on the levels of poaching activity included the robustness of domestic law enforcement associated with the killing of elephants and the illegal sale of ivory, relative levels of government corruption, and the level of investment in concentrated wildlife conservation efforts.

Similar bans on the trade in rhino horn have not been quite as successful. It is not clear that the CITES ban on international trading in rhino horns in 1977 resulted in decreased illegal hunting activity, possibly as a result of lesser degree of elasticity in demand for rhino horn products in end-user markets relative to ivory.¹⁰ It is also evident now, more than ever, that there have been major failures in the enforcement of the CITES ban in the primary destination countries for rhino horn products. Investigative reports have also illuminated the abuse of loopholes in the ban (such as the downgrading of South Africa's population of white rhinoceros to CITES Appendix II status) to allow a significant amount of rhino horn to be trafficked out of range countries as hunting "trophies." The entrance of purportedly legal horn as trophies into poorly regulated consumer markets (identified to be primarily now in Viet Nam) is thought to have contributed to the current surges in demand.¹¹

- **Strong Messaging from African Leaders, International Governments, and Non-Governmental Organizations; Seeking to Change Behavior in Consumer Nations**

A common theme in the history of halting illegal trade in certain wildlife parts is the importance of demonstrating the political will in both supply-side and demand-side countries to mitigate illegal activity. Strong political action taken by the leaders of those countries experiencing the brunt of illegal poaching activity was instrumental in demonstrating the commitment of their governments to address threats to economic security and healthy wildlife populations. Past Kenyan President Daniel arap Moi's now-famous burning of Kenya's ivory stockpile illustrated a deep commitment to recognizing the problem of illegal poaching activity within Kenya and the removal of those illegal supplies from the supply market.¹² History

⁸ *Id.*

⁹ Stiles, Daniel. "The ivory trade and elephant conservation." *Environmental Conservation* 31, no. 04 (2004): 309-321.

¹⁰ It should be noted that investigations performed after a major scale-up in enforcement of a domestic ban on the trade of rhinoceros horn in China in 1993 found that this executive action, coupled with a vigorous public awareness campaign, led to steep drops in the consumption of rhino horn. See Mills, Judy A., ed., "Rhinoceros horn and tiger bone in China: an investigation of trade since the 1993 ban" (Traffic International, 1997).

¹¹ Milliken, Tom, and Jo Shaw. "The South Africa-Viet Nam Rhino Horn Trade Nexus." *TRAFFIC* (2012): 134-136.

¹² There is considerable commentary on what the economic impacts of public destruction of domestic ivory stockpiles may entail for the relative price of wildlife parts on the legal and illegal markets and the future of the trade in these products. See, e.g. Nuwer, Rachel. "Destroying ivory to discourage poachers." *New Scientist* 220, no. 2937 (2013): 27.; Walker, John Frederick. "Rethinking Ivory: Why Trade in Tusks Won't Go Away." *World Policy Journal* 30, no. 2 (2013): 91-100.

suggests that a strong moral commitment that appeals to the need to conserve threatened species is a key element in pursuing a successful strategy for mitigating the illegal consumption of goods derived from them.

If we are to bring this lesson of history forward to the present case, the need to continue to raise the profile of wildlife trafficking on the international stage cannot be overstated. Strong symbolic action plays a significant role in shaping global opinions on wildlife trade. Already, the symbolic destruction of ivory stockpiles in the United States, Hong Kong, China, Kenya, Gabon, the Philippines, France, Belgium all indicate a strong lack of tolerance for illegal trading in products associated with the drastic decline in elephant populations and a commitment to their conservation. The expansion of the destruction of stockpiles of other wildlife parts like seized illegal rhino horns, leopard pelts, etc. can continue to build on this global momentum. Suggestions for continuing symbolic and action-oriented implementation of the National Strategy can be found in further sections of this report.

Leading up to the 1989 CITES ban on the trade in ivory, the intensification of consumer awareness campaigns proliferated in Europe and the United States, at the time serving as some of the largest markets for ivory consumption. The profile of the poaching crisis was raised as it garnered the attention of Western celebrities who decried the elephant massacres. Additional outreach and campaigning by international conservation organizations continued to increase international pressure to halt trade in ivory to stem illegal exploitation.¹³ The rapid increase in consumer awareness, coupled with the passage of the 1989 ban, led to the collapse of the domestic markets for ivory in the United States and Europe.¹⁴

The successful reduction of demand in the major ivory consuming nations in the early 1990s demonstrated the important role that demand-side drivers can (and must) play in addressing illegal trafficking. The National Strategy should be applauded for its extensive support for action on this part of the poaching equation. Later sections in this report specifically address both the economics associated with demand for ivory and rhino horn and methods for reducing demand in both supply and demand-side countries.

- **The Use of Paramilitary Operations**

Beyond the CITES-imposed ban on the international trade of ivory, range-country campaigns to stamp out poaching activities also were a key component in stemming the large-scale killings of elephants and rhinos in the late 1980s and early 1990s. Perhaps one of the most famous of these anti-poaching surge campaigns was Tanzania's Operation "Uhai," a joint offensive that pulled the country's wildlife department, police, and military into tight collaboration to apprehend individuals participating in poaching activities. This paramilitary

¹³ Walker, John Frederick. *Ivory's Ghosts: The White Gold of History and the Fate of Elephants*. Grove Press, 2010.

¹⁴ UNEP, CITES, and TRAFFIC IUCN. "Elephants in the Dust—The African Elephant Crisis." *A Rapid Response Assessment*. United Nations Environment Programme (2013.)

operation proved highly effective at curtailing illegal poaching and led to the arrest of some 2,500 people in six months.¹⁵

In Kenya, another epicenter of illegal hunting in the 1980s, the widespread use of shoot-on-site orders led to similar immediate reductions of illegal killing of high-profile species. Zimbabwe's analogue to Tanzania's Operation Uhai was its Operation "Stronghold," a paramilitary operation that was instituted in 1984. In the 10 years following the initiation of the operation, anti-poaching forces killed a total 167 poachers and elephant populations increased by 50% from 44,000 to more than 65,000.¹⁶ In an Asian context, the use of paramilitary force and the institutions of shoot-on-site wildlife protection measures in Nepal assisted in the recovery of the country's rhino population from 96 in 1968 to 600 in 2002.¹⁷

Importantly, however, poorly planned or executed paramilitary surges can be counterproductive. Tanzania's recent attempt to copy the strategies employed during Operation Uhai during the 1980s through the deployment of a new paramilitary surge titled Operation "Tokomeza" have illustrated how operations of this caliber can go awry if not rigorously monitored. Reports of abuses perpetrated by paramilitary forces associated with this program led to the suspension of the surge,¹⁸ the recent dismissal of four cabinet officials from the Tanzanian government including the Minister of Natural Resources and Tourism,¹⁹ and an apparent setback in efforts to obtain local community anti-poaching support.²⁰

- **Bounce-Back of Elephant and Rhino Populations**

The combination of the CITES ban on commercial trade in ivory and rhino horn, aggressive enforcement efforts, and strong leadership and messaging about the crisis led to significant reductions in the rate of killings of elephants and rhinos. As an expert summarized: "the severity of illegal activity experience during the 1970s and 1980s was reduced through a combination of measures along the trade chain, ranging from intensive in situ protection in range States to promoting substitutes in consumer nations."²¹

¹⁵ See Neumann, Roderick. "Disciplining peasants in Tanzania: From state violence to self-surveillance in wildlife conservation." *Violent environments* (2001): 305-327. Transparent studies on the effects of this operation on long-term relationships between central state forces and rural communities, however, have not been evaluated clearly.

¹⁶ Messer, Kent D. "Protecting endangered species: When are shoot-on-sight policies the only viable option to stop poaching?" *Ecological Economics* 69, no. 12 (2010): 2334-2340.

¹⁷ Martin, E. B., and L. Vigne. "Numbers of greater one-horned rhinos continue to rise." *Oryx* 30 (1996): 163-165.

¹⁸ See, e.g., Makoye, Kizito. "Anti-Poaching Operation Spreads Terror in Tanzania." *Inter Press Service News Agency*, 1 06, 2014.

¹⁹ Kevin, Heath. *Wildlife News*, "Two top wildlife officers sacked in Tanzania." Last modified February 25, 2014. Accessed March 9, 2014. <http://wildlifeneeds.co.uk/2014/two-top-wildlife-officers-sacked-in-tanzania/>.

²⁰ The complex relationships involved in the motivations for illegal poaching activities, which are tightly linked to the economic conditions under which poachers operate, are difficult to model and thus a consensus on appropriate scenarios in which the deployment of paramilitary force may never be reached. However, some statistical modeling of this relationship suggest that when local economic drivers to engage in poaching activities are so high as to exceed the potential ramification of domestic fines or imprisonment, shoot-on-site policies may be a last resort to halt the extermination of certain wildlife populations. For an example of analyses on the relationship between these factors see: Messer, Kent D. "Protecting endangered species: When are shoot-on-sight policies the only viable option to stop poaching?" *Ecological Economics* 69, no. 12 (2010): 2334-2340.

²¹ Milledge, Simon AH. "Illegal killing of African rhinos and horn trade, 2000-2005: the era of resurgent markets and emerging organized crime." *IPachyderm* 43 (2008): 96-107.

Coincident to the decline in killings, the historical record includes hopeful evidence that elephant and rhino populations can bounce back when poaching pressure is lifted. For example, a study performed in Tanzania's Tarangire National Park, which was heavily impacted by poaching during the 1980s illustrated just how fast elephant populations can rebound in the presence of favorable environmental conditions and increased protection. Following the 1989 CITES ban, poaching was halted and the population doubled between the years of 1994 and 2005.²²

The story of the conservation of Africa's southern white rhino species also elicits hope. The southern white rhinoceros was nearly extinct at the end of the 19th century. Intensive protection and breeding, however, has enabled the population to increase from 20-50 individuals in 1895 to just over 20,000 individuals in 2013.²³ The aforementioned increase in the population of the Greater One-horned rhino in Nepal is another testament to the ability of protected populations of rhinos to rise again.²⁴

Elephant and rhino population growth rates are variable by population and are influenced by a suite of environmental, social and anthropogenic factors. Accordingly, continued dialogue between ecological managers and wildlife protection bodies is crucial to the long-term survival of Africa's iconic species. This dialogue, between the scientists most intimately acquainted with the life history traits of heavily impacted wildlife species and wildlife protection authorities can provide a better understanding of how likely populations are to recover in the presence of intensified protection initiatives. Therefore, in this continued coordinated action plan to protect the planet's most exploited species, science most hold a strong seat at the table and experts in the study of these populations, not just economists, politicians, and tradesmen, should continue to have a voice in the development of plans for the future.

B. Why Prior Successes in Reducing Illegal Trafficking Have Been Reversed in Recent Years

- **Weakening of CITES Bans, The Muddying Of The Market, And Dramatic Upticks In Chinese Demand**

Several factors have been at work in undermining the previous success in reducing wildlife trafficking. One key factor has been the loss of a "bright line" ban on commercial trade in ivory and rhino horn. The ban did not affect the sales of pre-ban ivory exports and imports and the lack of widely-available, affordable processes by which ivory can be tested for age and origin allowed newly-imported ivory to be passed off as legal.

In addition, the CITES-approved one-off sales of ivory to Japan and then to China in 1999 and 2008 arguably sent ambiguous signals to consumers and producers of ivory, blurring

²² Foley, Charles AH, and Lisa J. Faust. "Rapid population growth in an elephant (*Loxodonta africana*) population recovering from poaching in Tarangire National Park, Tanzania." *Oryx* 44, no. 2 (2010): 205.

²³ Emslie, R. 2012. *Ceratotherium simum*. In: IUCN 2013. IUCN Red List of Threatened Species. Version 2013.2. www.iucnredlist.org. Downloaded on 07 March 2014.

²⁴ Martin, E. B., and L. Vigne. "Numbers of greater one-horned rhinos continue to rise." *Oryx* 30 (1996): 163-165.

the lines further between legal and illegal ivory sales. The mismanagement of CITES permitting procedures and lack of enforcement of CITES requirements in countries fostering the highest demand for ivory products also undermined the effectiveness of the ban.²⁵ For example, past lapses in enforcement of regulations on the sale in ivory in China led to the “misplacement” of 110 tons of ivory from state stockpiles in 2002, according to a 2008 report by the Environmental Investigation Agency.²⁶

The explosive economic growth in China and the emergence of a newly wealthy middle class capable of purchasing ivory goods continues to serve as the primary driver of demand for ivory that exceeds the legal supply. Indeed, China remains the primary destination for much of the illegal ivory now being trafficked out of Africa.²⁷ Recent executive actions like the crushing of seized ivory stockpiles²⁸ and severe penalties for possessing illegal ivory²⁹ provide hopeful indications that China’s leadership may adopt more aggressive efforts to curtail this escalating demand. As it stands, however, China’s failure to date to establish and enforce a ban on commercial trade in ivory and rhino horn is continuing to undermine the international ban on ivory and rhino horn trafficking that has been in place for more than two decades.³⁰

In Vietnam, the primary destination for much of the illegally-sourced rhino horn now leaving the African continent, conspicuous consumption has also risen as the economic prosperity of the country’s populace has increased. In an extensive report on the rhino poaching crisis produced by TRAFFIC, four primary consumer markets were identified: (1) the terminally ill who believe that rhino horn has curative effects for diseases like cancer; (2) middle and upper-income young mothers who believe in the purported ability for rhino horn to reduce fever; (3) upper class individuals who give rhino horns as expensive gifts to garner favor with socio-economic or political elites; and (4) the young and newly wealthy who use rhino horn for

²⁵ Following the second one-off sale of ivory stockpiles to Japan and China in 2008 there was significant concern that the release of ivory would stimulate Chinese demand for ivory products and renew poaching pressures to meet growing demand. While monitoring frameworks were put in place by the Chinese government, the infiltration of illegally sourced African elephant ivory had made its way into the legal supply, at times mixing with legal mammoth ivory. Additionally, the use of government-issued identification cards for ivory pieces weighing 50 grams or more was variable and could provide additional opportunities to launder illegally sourced ivory through legal channels. For more information see Vigne, Lucy, and Esmond Martin. "Consumption of elephant and mammoth ivory increases in southern China." *Pachyderm* 49 (2011): 79-89.

²⁶ Environmental Investigation Agency, "BLOOD IVORY Exposing the myth of a regulated market." Accessed February 27, 2014. <http://www.eia-international.org/wp-content/uploads/EIA-Blood-Ivory.pdf>.

²⁷ See UNEP, CITES, and TRAFFIC IUCN. "Elephants in the Dust—The African Elephant Crisis." *A Rapid Response Assessment. United Nations Environment Programme* (2013.)

²⁸ Doshi, Vidhi. "China crushes six tonnes of ivory in crackdown on illegal trade: The illegal stockpile was destroyed in a landmark move but critics say it is just a fraction of the total." *The Independent*, January 6, 2014. <http://www.independent.co.uk/voices/comment/china-crushes-six-tonnes-of-ivory-in-crackdown-on-trade-9042555.html> (accessed March 9, 2014).

²⁹ CITES, "China increases prosecutions in response to illegal trade in elephant ivory." Last modified November 29, 2013. Accessed March 9, 2014. http://www.cites.org/eng/news/sundry/2013/20131128_china_ivory_prosecutions.php.

³⁰ Mary Rice, the Executive Director of the Environmental Investigation Agency, has suggested that China’s lack of enforcement of its ivory trade regulations has eroded the power 1989 CITES ban and could jeopardize elephant populations. See *The Ecologist*, "Legal ivory trading severely undermines elephant conservation." Last modified November 8, 2012. Accessed March 9, 2014. http://www.theecologist.org/News/news_analysis/1669938/legal_ivory_trading_severely_undermines_elephant_conservation.html.

everything from hangover cures to remedying male impotence as a means of flaunting wealth. Lax enforcement and the presence of high-level governmental corruption in the trafficking of rhino horn have let the growth in demand in these markets become unsustainable.³¹

Finally, with the rebound of some elephant and rhino populations after the 1989 ban, international attention and financial support for anti-poaching efforts waned, providing cover for the explosive reemergence of illegal trafficking activity in the last five years. The lack of financial support for enforcement bodies in range countries has left them woefully under equipped to combat the now well-outfitted, well-funded, and efficient poaching syndicates now responsible for much of the illegal poaching of elephants and rhinos.

C. Why the Current Crisis is Particularly Acute

- **Potential real and near-term extinction risk for forest elephants**

Given disturbing information about large killings of forest elephant herds,³² armed conflict and severe political instability in the region, and the difficulty of obtaining reliable population data, there is a very real concern that if illegal exploitation continues, Central Africa's forest elephant populations could approach extinction.³³

Extinction of the African forest elephant could have enormous implications on the ecology of the tropical rainforest habitats that it inhabits. Elephants act as rainforest gardeners, spreading seeds from trees that have co-evolved to rely on them for effective dispersal. The lack of elephants could have a cascade of impacts on rainforest ecology in an already threatened ecosystem that provides vital services including oxygen production, carbon sequestration, and climatic control to the planet.³⁴

- **Potential longer-term risk of losing elephants in the wild**

The continuation of unsustainable poaching trends have the very real possibility of rendering regional populations of both forest and savanna elephants incapable of recovering and destined for local extinction.³⁵ This has serious implications for the ecology of all elephant

³¹ Milliken, Tom, and Jo Shaw. "The South Africa–Viet Nam Rhino Horn Trade Nexus." *TRAFFIC* (2012): 134-136.

³² See, e.g., Laurel, Neme. National Geographic, "Chaos and Confusion Following Elephant Poaching in a Central African World Heritage Site." Last modified May 13, 2013. Accessed March 9, 2014. <http://newswatch.nationalgeographic.com/2013/05/13/chaos-and-confusion-following-elephant-poaching-in-a-central-african-world-heritage-site/>.

³³ Maisels, Fiona, et al., "Devastating decline of forest elephants in Central Africa." (*PLoS One* 8.3 (2013)).

³⁴ Wasser, Samuel, Joyce Poole, Phyllis Lee, Keith Lindsay, Andrew Dobson, John Hart, Iain Douglas-Hamilton et al., "Elephants, ivory, and trade." (*Science* 327, no. 5971 (2010)).

³⁵ Studies suggest that healthy elephant populations have a natural annual growth rate of around 5 to 6 percent (See: Dunham, Kevin M. "Trends in populations of elephant and other large herbivores in Gonarezhou National Park, Zimbabwe, as revealed by sample aerial surveys." *African Journal of Ecology* 50, no. 4 (2012): 476-488.). However, in estimates performed in 2011, illegal off-take of elephants in all African sites monitored by the CITES Monitoring of the Illegal Killing of Elephants (MIKE) Program amounted to around 7.4 percent of the total elephant population, thus exceeding the continental growth-rate and could contribute to continent-wide population reductions.

habitats as they act as vital ecosystem engineers. While elephant populations differ significantly on a regional basis (and pose serious challenges to their effective management within what some managers refer to as over-populated areas), the poaching scourge, if left unchecked, will almost certainly begin to expand into regions once thought to be elephant safe havens.

Disproportionate impacts of poaching on large, senior individuals in populations that possess the largest ivory also jeopardize the survival of these highly-intelligent, social mammals that depend heavily on the transfer of knowledge from older to younger individuals. While there are examples of populations rebounding after poaching pressure abates, it is also vital to recognize that poaching activity that disrupts age and social structures in vulnerable populations can result in long-term lags in population growth.³⁶ Thus, curtailing poaching now, and protecting those senior animals from the impacts of illegal exploitation, should be seen as a key action in the long-term promotion of healthy elephant populations.

- **Potential real and near-term extinction risk for rhinos in the wild**

The relative safety of global wild rhinoceros populations is in serious question in the face of increased illegal poaching activity. The total population of all three Asian species of rhinoceros (Javan, Sumatran, and Indian) collectively amount to fewer than 4,000 individuals that now live in highly-fragmented, poorly-policed areas. The toll of the surge in demand for rhino horn has led to the extirpation of the Javan rhinoceros population in Viet Nam, one of only two remaining wild populations in the world.³⁷ It has also been noted that the western black rhinoceros has also been declared extinct.³⁸

Rhino poaching activity in South Africa, the stronghold of Africa's recovered rhino population, continues to escalate. In 2013, over 1000 rhino were lost to illegal hunting alone with the majority of those animals killed in the famous Kruger National Park.³⁹ Some modeling of population performance in the face of escalating poaching activity indicate that total populations of white rhino in Kruger National Park, once considered a stronghold for rhino conservation, could experience net declines as soon as 2016⁴⁰ and head, once again, toward extinction risk for populations in the wild.⁴¹ As home to 83 percent of Africa's rhinos (both black and white

See UNEP, CITES, and TRAFFIC IUCN. "Elephants in the Dust—The African Elephant Crisis." *A Rapid Response Assessment. United Nations Environment Programme* (2013).

³⁶ See, e.g., Gobush, Kathleen, Ben Kerr, and Samuel Wasser. "Genetic relatedness and disrupted social structure in a poached population of African elephants." *Molecular ecology* 18, no. 4 (2009): 722-734.

³⁷ Van Coeverden de Groot, P., S. Mahood, and B. Long. Extinction of the Javan Rhinoceros (*Rhinoceros sondaicus*) from Vietnam. WWF-Vietnam, 2011.

³⁸ Emslie, R. 2011. *Diceros bicornis* ssp. *longipes*. In: IUCN 2013. IUCN Red List of Threatened Species. Version 2013.2. www.iucnredlist.org. Downloaded on 27 February 2014.

³⁹ Stoddard, Ed., "More than 1,000 rhinos poached in South Africa last year - Government." Reuters (U.S. Edition, January 17, 2014; <http://www.reuters.com/article/2014/01/17/us-safrica-rhinos-idUSBREA0G0UT20140117>).

⁴⁰ Ferreira, Sam M., Judith M. Botha, and Megan C. Emmett, "Anthropogenic influences on conservation values of white rhinoceros" (*PloS one* 7, no. 9 (2012)).

⁴¹ According to Save the Rhino International (see footnote below), in 2010, approximately 20-25 percent of all rhinos in South Africa were privately owned and could be found on private reserves and ranches. The large bulk of the population in South Africa is still found on state-owned and managed land and thus is rendered potentially more vulnerable given that fewer resources can be applied directly to the protection of individual animals over vast areas. Protecting these free-ranging rhinos under state management should be of intense concern.

species) and up to 73 percent of all rhinos worldwide⁴², the fate of South Africa's rhinos could forecast the fate of wild rhinos worldwide.

- **Negative economic ramifications for range nations**

With the growth of nature-based tourism worldwide, Sub-Saharan Africa continues to exhibit the potential for economic growth based on this sector. For example, Tanzania's national income from tourism, most of which is wildlife-based⁴³ increased from \$60 million in 1990 to \$1250 million in 2010.⁴⁴ The exploitation of already diminished stocks of these species will have direct impacts on the health of the nature-based tourism industries that provide much of that income. Therefore, it is in the best interest of these countries to immediately address problems of illegal exploitation.

The pursuit of sustainable rural development strategies in many of the countries also hinges on the long-term sustainability of wildlife-based tourism. While there is a long, complicated history of conflict between rural development and wildlife conservation, the growth of community-based conservation initiatives in many elephant and rhino range countries retains promise of making wildlife more valuable alive than dead. The National Strategy recognizes this possibility and acknowledges the necessity of not only involving communities in the conservation of these iconic species but also insuring that communities stand to benefit economically from those conservation activities.

A number of community-based conservation initiatives have been analyzed in a later section of this document and we provide recommendations on what models have performed the best in their development and conservation goals and thus could warrant more attention by the Advisory Council. Additionally, illegal trade in wildlife, and the corruption it fosters, continues to undermine political stability and the rule of law in many range countries. This destabilizing impact jeopardizes both domestic and international investment in sustainable business ventures that could be the boon of struggling and growing economies.

⁴² Save the Rhino International, "Poaching: The Statistics"

http://www.savetherhino.org/rhino_info/poaching_statistics.

⁴³ In the case of Tanzania, this revenue is derived from both non-consumptive photo tourism and trophy hunting. It should be noted that wildlife tourism is distributed unequally across Sub-Saharan Africa, however, with Southern and East Africa receiving the most wildlife-based tourism and Central and West Africa receiving the least. As a result, protected areas that depend on tourist revenues to maintain operating costs continue to suffer. For details see: Chardonnet, Ph, B. des Clers, J. Fischer, R. Gerhold, F. Jori, and F. Lamarque. "The value of wildlife." *Revue scientifique et technique-Office international des épizooties* 21, no. 1 (2002): 15-52.

⁴⁴ World Bank (2012) 'Tanzania Economic Update: Stairways to Heaven'.

http://siteresources.worldbank.org/INTAFRICA/Resources/Tanzania_Economic_Update_201202.pdf

II. U.S. Enforcement of Wildlife Trafficking Laws

A. Illegal Wildlife Trafficking Is Fueling Armed Conflicts and Terrorist Groups, Implicating U.S. Security Interests

Wildlife trafficking now poses a national security risk. An industry that annually yields approximately \$20 to \$40 billion internationally in organized crime,⁴⁵ it is a lucrative source of funding in African range countries for terrorist and insurgency groups, and is increasingly linked to large-scale international criminal syndicates that perpetuate the scourge. Both the level of violence and corruption that accompanies wildlife poaching in range countries has escalated in recent years.

Commentators have highlighted wildlife trafficking as an emergent funding source for terrorism, and have noted that, based on recent reports documenting this relationship, “the U.S. Department of State directed intelligence teams to start tracking wildlife poachers on the continent in order to ascertain the impact of trafficking in high-value animal products on U.S. national security.”⁴⁶ Others have made similar observations.⁴⁷ In a recent interview, former AFRICOM Commander General Carter Ham stated there is “growing evidence of the linkages of poachers and traffickers with other illicit networks and international crime,” citing Joseph Kony’s Lord’s Resistance Army (LRA) in particular.⁴⁸

B. The U.S. Should Enhance and Vigorously Enforce of Its Wildlife Laws to Help Address the Wildlife Trafficking Crisis

Although the United States is no longer a dominant player in the global ivory and rhino horn market, illegal wildlife parts continue to be bought and sold and/or transshipped through the United States. In addition, some of the large sums of money involved in illegal trafficking activity may be flowing through U.S. banks or other financial institutions. Given the U.S.’s historic role in ivory and other wildlife trafficking, and the fact that an illegal market for ivory, rhino horn and other wildlife parts still exists in the U.S., it is important that the United States

⁴⁵ Office of the Director of National Intelligence, (2011). *Special report: The threat to U.S. national security posed by transnational organized crime*. Washington, D.C.

⁴⁶ Bergen, J. (May 1, 2013). Public-private partnerships essential to combat poaching. *World Politics Review*. Retrieved January 22, 2014, <http://www.worldpoliticsreview.com/articles/12907/public-private-partnerships-essential-to-combat-poaching>.

⁴⁷ Srour, R. (January 23, 2014). Wildlife Poaching Thought to Bankroll International Terrorism. *Inter Press Service*. IPS-Inter Press Service News Agency. Retrieved January 23, 2014, <http://www.ipsnews.net/2014/01/wildlife-poaching-thought-bankroll-international-terrorism/>. Bergen, J. & Medina, M. (January, 2014). Break the link between terrorism funding and poaching. *The Washington Post*. Retrieved March 8, 2014, http://www.washingtonpost.com/opinions/break-the-link-between-terrorism-funding-and-poaching/2014/01/31/6c03780e-83b5-11e3-bbe5-6a2a3141e3a9_story.html. Goldenberg, S. (2012). U.S. Intelligence teams to track wildlife poachers in Africa and Asia. *The Guardian*. <http://www.theguardian.com/environment/2012/nov/08/us-intelligence-wildlife-poachers>.

⁴⁸ McCabe, G. (March, 2013). General Carter Ham discusses U.S. Africa Command. Army Broadcasting, Part III, min 6.34 – 8.07. Retrieved January 23, 2014, <<http://www.youtube.com/watch?v=IWMS0uHIQWo>>. Agger, K., & Hutson, J. (June, 2013). *Kony’s ivory: How elephant poaching in Congo helps support the Lord’s Resistance Army*. Center for American Progress Enough Project. Retrieved January 22, 2014, <http://www.enoughproject.org/files/KonysIvory.pdf>.

“show the way” for the international community by exercising leadership in reducing demand for illegal wildlife products.

The President’s decision to ban domestic trade in elephant ivory in the United States represents this type of leadership that we hope will be replicated by other nations. As discussed below, we recommend that the United States move swiftly to close loopholes in current regulations and encourage other nations to do the same.

Likewise, last year’s ivory crush in Denver provided an encouraging example of the United States’ commitment to find and destroy ivory stocks, providing a tangible demonstration that ivory should not be valued in the marketplace. Following the U.S. crush, several other nations followed suit, including France, Chad, China and Hong Kong (as well as Gabon and the Philippines in 2012 and 2013).⁴⁹

While applauding these actions, we recommend that the U.S. take additional steps to put the hammer on wildlife trafficking in the United States and educate Americans that the market in ivory, rhino horn or other illegal wildlife parts is devastating populations of some of our earth’s most iconic creatures and will not be tolerated. In particular, as discussed in more detail below, we have identified several specific changes in the law that would materially enhance the tools available to U.S. law enforcement officials to combat wildlife trafficking.

C. Background: Pertinent Aspects of Current U.S. Wildlife Trafficking Laws and Related Recommendations

The Lacey Act, 16 U.S.C. 3371 et seq., provides the most comprehensive coverage of all U.S. federal statutes related to wildlife trafficking, as well as the greatest potential for substantial penalties. As a result, it is the predominant mechanism for enforcing wildlife in the United States. Under the Act, penalties for interstate and international trafficking in protected wildlife include civil fines, forfeiture of wildlife and equipment used in the commission of the violation, and civil and criminal penalties of up to \$10,000 per violation or \$20,000 maximum in fines and/or up to five years imprisonment.

A primary feature of the Lacey Act is its two step structure. First, the wildlife at issue must have been taken, possessed, transported, or sold in violation of an underlying law including, in some cases, foreign laws that were broken by traffickers who are seeking to sell wildlife parts illegally in the U.S. (predicate violation). The Lacey Act defines its predicate laws as "laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation or sale of fish or wildlife or plants."⁵⁰ Second, it must have been imported, exported, transported, received, acquired, or purchased in a manner prohibited by the Lacey Act (overlying violation).⁵¹

Prosecutions under section 3373 of the Lacey Act can be brought as either misdemeanors or felonies. Subsection 3373(d)(1)(B) provides a misdemeanor sanction for any negligent

⁴⁹ Svati Kirsten Narula, “Crush and Burn: A History of the Global Crackdown on Ivory,” *The Atlantic*, Jan. 27, 2014 <http://www.theatlantic.com/international/archive/2014/01/crush-and-burn-a-history-of-the-global-crackdown-on-ivory/283310/>.

⁵⁰ 16 U.S.C. § 3371(d) (2014).

⁵¹ 16 U.S.C. § 3372(b) (2014).

violation of the Act. For felonies, the government must prove that the defendant knew that the wildlife part had been unlawfully obtained. In some cases, the government must also prove market value and commercial activity.⁵²

In addition to the Lacey Act, several federal statutes prohibit trade in protected wildlife and wildlife parts. The Endangered Species Act (ESA) provides misdemeanor penalties for unlawfully taking or trading in species listed as endangered or threatened under federal law.⁵³ The ESA also implements the Convention on International Trade in Endangered Species of Fauna and Flora (CITES).⁵⁴ The African Elephant Conservation Act (AfECA) prohibits the export of raw ivory from the United States and the import of raw or worked ivory in most circumstances.⁵⁵

D. Recommended Upgrades to U.S. Wildlife Trafficking Laws

- **Enhancing the U.S. Ban on Commercial Trade in Ivory**

As noted above, the President announced that the U.S. Fish & Wildlife Service (FWS) will take several administrative steps to tighten up the ban on the commercial sale of ivory in the United States. To implement the ban, the White House is directing federal Departments and Agencies to (1) prohibit commercial import of African elephant ivory; (2) prohibit the commercial export of elephant ivory, except for bona fide antiques; (3) restrict domestic resale of elephant ivory, except for bona fide antiques; (4) clarify and restrict the definition of “antique” under the Endangered Species Act (ESA); (5) restore ESA protection for African elephants; and (6) limit the number sport-hunted trophies that individuals can import to two per year.⁵⁶

These are important, clarifying steps that should remove ambiguity regarding the illegality of ivory trade in the United States. *We recommend that the FWS complete its administrative processes to close the current loopholes as soon as practicable, given the seriousness of the current elephant crisis. We specifically request that FWS provide the Advisory Council with a progress report each quarter and that the Service endeavor to complete the required rulemaking(s) within 12 to 18 months.*

While FWS will be proceeding with a rulemaking that will put the burden on the seller of “antique ivory” to demonstrate that it qualifies as antique under the Endangered Species Act, we recommend that the Administration consider expanding the ban on ivory to include trade in “antique ivory” in order to provide additional clarity to the marketplace and make it more difficult to pass off illegally procured ivory as exempt antique ivory. A legislative change would be required to address the issue. It may be most appropriate in that regard to use the African Elephant Conservation Act (AfECA)⁵⁷ as the legislative vehicle to effectuate that change, given

⁵² Robert S. Anderson, “The Lacey Act: America’s Premier Weapon in the Fight Against Unlawful Wildlife Trafficking,” 16 *Public Land Law Review* 27, 58 (1995).

⁵³ *Id.* at 35.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Press Release, The White House, FACT SHEET: National Strategy for Combating Wildlife Trafficking & Commercial Ban on Trade in Elephant Ivory (Feb. 11, 2014), <http://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combating-wildlife-trafficking-commercial-b>.

⁵⁷ 16 U.S.C. §§ 4201-4246 (2014).

the AfECA's exclusive focus on elephants and ivory and the fact that it is AfECA that implements the CITES ban on ivory imports in U.S. law.

- **Toughening Up Fines and Penalties under the Lacey Act and the Endangered Species Act**

Although the Lacey Act is potentially a powerful enforcement tool, it is underutilized. Despite the availability of strong penalties under the Lacey Act—with fines up to \$250,000 for individuals⁵⁸ and \$500,000 for groups,⁵⁹ and prison sentences up to five years⁶⁰—many judges have been reluctant to impose stiff penalties on violations of the Act.

For a first offense of animal smuggling in the United States, convictions may only result in a fine and not prison time, while exactly the opposite is true for drug smuggling. In 1997, for example, a federal judge convicted and sentenced an individual to 46 months in jail and a \$10,000 fine for smuggling animals worth more than \$250,000 (or four percent of the total value of the smuggled items). Smuggling a similarly priced amount of cocaine would have resulted in 121 to 151 months prison time and potential fines of more than \$175,000 (seventy percent of the total value of the smuggled contraband).⁶¹

We recommend that the United States Department of Justice issue updated guidance to prosecutors and recommended sentences to courts that reflect the seriousness of wildlife trafficking crimes. In providing updated prosecutorial guidance and sentencing recommendations, the DOJ should provide information and context to prosecutors and judges regarding the mass killings that lie behind wildlife trafficking crimes. More prosecutions, and more stringent and uniform sentencing would send a strong message that wildlife crimes and their ill-begotten profits will not be tolerated.

We also recommend amending the Lacey Act to make it easier to prosecute and penalize wildlife traffickers. First, we suggest adding conspiracy as a specific predicate offense to the Lacey Act. The crime of conspiracy occurs when “two or more persons conspire” to violate the Lacey Act.⁶² The federal charge of conspiracy broadens the reach of the Lacey Act by allowing a federal conviction for behavior short of an actual completed Lacey Act offense. Because illegal wildlife traffickers are often caught before violating the Lacey Act, conspiracy is a way to charge the wrongdoers for committing a crime. Likewise, if a Lacey Act offense is committed, the offenders can be charged with conspiracy to violate the Lacey Act in addition to a charge for actually violating the Act. The conspiracy offense can act as further arsenal against wildlife violators. Under the criminal code, charging an individual with conspiracy may be considered a graver offense than the contemplated crime and can lead to harsher penalties. In addition, conspirators can be tried together and convicted of crimes that other defendants committed.⁶³

⁵⁸ 18 U.S.C. § 3571(b)(3) (2014).

⁵⁹ 18 U.S.C. § 3571(c)(3) (2014).

⁶⁰ 16 U.S.C. § 3373(d)(1) (2014).

⁶¹ Mara E. Zimmerman, “The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade,” 36 *Vanderbilt Journal of Transnational Law* 1657, 1676 (2003).

⁶² 18 U.S.C. § 371 (2014).

⁶³ Christine Fisher, “Conspiracy to Violate the Lacey Act,” 32 *Environmental Law* 475, 502, 505 (2002).

We recommend similar changes to the Endangered Species Act (ESA)⁶⁴ to reflect the gravity of wildlife trafficking crimes. Currently, the ESA, which implements CITES,⁶⁵ has only misdemeanor penalties, with fines of up to \$100,000 for individuals⁶⁶ and \$200,000 for groups,⁶⁷ and up to a one year prison sentence.⁶⁸ ***We recommend that the Administration undertake a study to determine the level of fines under the ESA necessary to effectively deter illegal wildlife traffickers. We anticipate that such a study will recommend that Congress increase ESA penalties from misdemeanors to felonies to better deter wildlife trafficking crime, specifically those that violate CITES, and provide appropriate penalties when they occur.***

Dramatic results have been accomplished in nations that have opted to impose stiffer sentences for illegal trade in wildlife. In the 1970s, Nepal faced imminent extinction of its rhinoceros population through a poaching due to the lucrative trade in rhino horn in India. In response, the Nepalese government enacted legislation to provide prison terms of up to five years and substantial fines. The new law virtually eliminated the rhino trade network in Nepal.⁶⁹

- **Bolster the Use of U.S. Money Laundering Tools to Stop Wildlife Trafficking Syndicates**

The use of anonymous shell companies, often layered through multiple jurisdictions, is one of the most effective tools available to money launderers and organized criminals, obscuring the money trail and impeding law enforcement investigations. Unfortunately, lax regulation and disparate state statutes make the United States a breeding ground for anonymous shell corporations. It is estimated that nearly two million companies are established in the United States each year, and the vast majority of companies are not required to provide any information, including names and addresses, about the owners of the firms. A recent report from the World Bank revealed that the United States was the locale of choice for corrupt foreign politicians establishing offshore shell companies to launder their money and gain access to the international financial system. There is also reason to believe that banks themselves are not complying with anti-money-laundering regulations.⁷⁰

The National Strategy calls on Congress to consider legislation to recognize trafficking crimes as predicate offenses for money laundering. Toward that end, we recommend that the Administration recommend that Congress amend 18 U.S.C. § 1956(c)(7), which defines the predicate “specified unlawful activit[ies]” triggering eligibility for money laundering prosecution, to include wildlife crimes such as those codified in the ESA and Lacey Act.

Money laundering – which is defined as knowingly engaging in a financial transaction with the proceeds of a crime for the purpose of concealing the illicit origin of the proceeds – is necessary for wildlife traffickers to disguise their profits and is likely facilitated by U.S. banks, making the

⁶⁴ 16 U.S.C. §§ 1531-1544 (2014).

⁶⁵ 16 U.S.C. § 1538(c) (2014).

⁶⁶ 18 U.S.C. § 3571(b)(5) (2014).

⁶⁷ 18 U.S.C. § 3571(c)(5).

⁶⁸ 16 U.S.C. § 1540(b)(1) (2014).

⁶⁹ Eric McFadden, “Asian Compliance with CITES: Problems and Prospects,” 5 *Boston University International Law Journal* 311, 323 (1987).

⁷⁰ Statement of Tom Cardamone, Managing Director, Global Financial Integrity, 5-6, 8 http://www.foreign.senate.gov/imo/media/doc/Tom_Cardamone_Testimony1.pdf (2012).

offenders available for federal prosecution. Defendants convicted under the federal money laundering statute can face fines up to \$500,000 or twice the value of the laundered money and up to 20 year prison sentences.⁷¹ Adding wildlife trafficking offenses to these statutes increases both the tools available to prosecutors in charging offenders and the likelihood of harsher penalties. Significantly, money laundering is also considered a racketeering activity under the RICO statute (discussed further below).

In addition, *we recommend that the Treasury Department’s authority to trace funds related to counterterrorism activities be explicitly extended to the entire chain of wildlife trafficking activity, including upstream poaching activity itself, given the evidence that international crime syndicates involved in wildlife trafficking are fueling armed conflicts and terrorist groups.* In this way, kingpins and middlemen who are hiring the poachers, and who are facilitating the movement of funds to terrorists and other armed groups, can be identified and brought to justice.

Finally, *we recommend that the Administration support Senate bill 1465, the “Incorporation Transparency and Law Enforcement Assistance Act.” This legislation would require persons who form corporations in the United States to disclose the beneficial owners of the corporations that they have formed and would require states to establish registries with this information, which could be accessed by law enforcement and tax authorities.* The legislation would go a long way in limiting the ease with which organized criminal networks can hide, launder and funnel illicit funds through layers of nominee trusts, partnerships, shell companies, numbered bank accounts and other entities for which little, if any information, is required.⁷²

- **Apply the Racketeer Influenced and Corrupt Organizations Act to Wildlife Trafficking Crimes**

One of the most powerful tools available to federal prosecutors is the Racketeer Influenced and Corrupt Organizations Act (RICO).⁷³ RICO allows the government to target groups of criminals, and their typically insulated leaders, rather than just low-level conspirators and sets forth severe consequences for those who engage in a pattern of wrongdoing as a member of a criminal enterprise. Title 18, Section 1961 of the U.S. Code sets forth a long list of racketeering activities, the repeated commission of which can form the basis of a RICO Act claim. These underlying federal and state offenses exist independently of the act, and include homicide, kidnapping, extortion, and witness tampering as well as property crimes such as robbery and arson, and financial crimes such as money laundering and counterfeiting. Under the law, if a group is involved any of these crimes, their leaders can be convicted of racketeering—even if they personally did not pull the trigger, deal the drugs or accept the bribe.

We recommend that the Administration petition Congress to amend 18 U.S.C. § 1961(1) to make wildlife trafficking a “racketeering activity.” Doing so would provide federal prosecutors with new tools to stop wildlife traffickers. RICO would make it easier than traditional wildlife trafficking laws to prosecute multiple defendants at once; it is easier to prove

⁷¹ 18 U.S.C. § 1956(b) (2014).

⁷² Statement of Tom Cardamone, 8.

⁷³ 18 U.S.C. §§ 1961-1968 (2014).

the existence of an “association” under RICO than a traditional “conspiracy.”⁷⁴ Furthermore, unlike the Lacey Act, RICO does not require any greater mens rea beyond that of the predicate crime.⁷⁵ Also, the government can take down organized wildlife trafficking groups if it can use RICO to prosecute offenders at all stages of criminal activity—from importers to money launderers—in a single case.

Additionally, using RICO in prosecuting wildlife trafficking crimes increases the severity of possible penalties. Defendants convicted of violating RICO face a \$25,000 fine for each offense and a prison sentence up to twenty years.⁷⁶ In addition, not only can the government seize violators’ property and interests relating to the proven criminal enterprise and racketeering activity, the rules of procedure in a RICO prosecution allow the government to freeze the defendant’s assets before the case even goes to trial.⁷⁷ Because the fines and forfeiture associated with RICO convictions are so significant, typically resulting in the offender paying more in fines than the value of the contraband, this legislative change would help take the profit out of the illegal wildlife trade and end the days of wildlife trafficking being a low-risk, high-profit crime. Offenders facing significant penalties are more likely to become key cooperating defendants than those facing a light penalty.

- **Amend the Travel Act and Expand Restitution Authorities to Apply to Wildlife Trafficking Offenses**

*We recommend that the Administration petition Congress to add wildlife trafficking as an “unlawful activity” to the Travel Act under 18 U.S.C. § 1952(b). By making this change, wildlife traffickers who travel or use the mails in interstate or foreign commerce could be punished with increased fines and prison sentences of up to twenty years, if violence is involved.*⁷⁸ In addition to underscoring the seriousness of the offenses, acting as a deterrent and resulting in stiffer penalties, expanding the Travel Act to cover wildlife crimes would allow enforcement efforts to target the so-called major players in wildlife trafficking networks.

We also recommend that the list of crimes covered by the Mandatory Restitution Act of 1996 (MVRA)⁷⁹ be expanded to include the Lacey Act, so seeking restitution could become standard practice in wildlife trafficking cases, resulting in both harsher monetary penalties for convicted traffickers and greater resources for the foreign nations charged with protecting endangered wildlife. Applying the MVRA enables “identified” victims – potentially including source countries for illegal wildlife parts – to obtain restitution for certain losses suffered as a result of the commission of underlying offenses.

A recent Second Circuit case illustrates how restitution would work in Lacey Act violations involving the seizure of prohibited wildlife items belonging to a foreign nation. In *United States v. Bengis*, following the defendants’ guilty plea to conspiracy to violate the Lacey Act by engaging in a smuggling scheme involving the illegal harvesting of lobsters in South

⁷⁴ Robert J. Shaw, “Nabbing the Gourmet Club: Utilizing RICO Enforcement and Punitive Provisions to Curb the International Trade of Endangered Species,” 42 *New York Law School Law Review* 283, 299 (1998).

⁷⁵ *Id.* at 297.

⁷⁶ 18 U.S.C. § 1963(a) (2014).

⁷⁷ Shaw, *Nabbing the Gourmet Club*, 301.

⁷⁸ 18 U.S.C. § 1952(a) (2014).

⁷⁹ 18 U.S.C. § 3663 (2014).

African waters for export to United States, the Second Circuit Court of Appeals heard the government's appeal from the district court's denial of its application for restitution under the MVRA and the Victim and Witness Protection Act (VWPA).⁸⁰ The court reversed the district court in holding that South Africa had a property right in lobster poached from its waters and was entitled to restitution for defendants' illegal poaching and trafficking scheme.⁸¹

Following the court's decision to hold a restitution hearing, the government submitted a report prepared by a group of experts commissioned by South Africa, setting out two different methods for calculating restitution, one of which focused on the cost of remediation, i.e., what it would cost South Africa to restore the rock lobster fishery to the level that it would have been had the defendants not engaged in overharvesting (the "catch forfeit" amount) and the other of which focused on the market value of the overharvested fish and was calculated by multiplying the quantity of overharvested fish by the prevailing market price.

A second, related amendment to the restitution statutes would be to create a rebuttable presumption that once wildlife products are found to have been trafficked illegally, such articles will be deemed to be the property of the state or country of origin, absent a showing of superior title. The state or country from which the product was taken would be deemed a victim entitled to restitution. This would require the addition of language to the following section of the restitution statutes: 18 U.S.C. §§ 3663(a)(2) and 3663(A)(a)(2).

In situations in which there is no identifiable victim (as when the ivory's country of origin cannot be identified), a third, related amendment to the restitution statutes would allow the court to order that the defendant make restitution to a designated fund focused on combating illegal trafficking in prohibited wildlife, such as the Lacey Act Reward Fund (also called the Lacey Act Reward Account), which is used to pay for evidence storage and rewards for information leading to convictions under the Lacey Act.

- **Providing More Financial Support for U.S. Enforcement Efforts**

It is estimated that there are only enough enforcement agents to inspect approximately 20% of the 25,000 shipments of wildlife products that enter the United States through New York each year. This is particularly unfortunate as transporting poached ivory across national borders is the simplest situation in which to prosecute ivory traffickers and carries the heaviest penalties.⁸²

The Fish and Wildlife Service will be threading a very narrow needle as it attempts to carry out its added responsibilities under the new enforcement strategy with an extremely constrained operations budget. This is a gargantuan task for an agency with approximately 213 agents spread across the country, the same number that it had in the 1970s, made even harder by the class of approximately 24 agents forced to "sit out" due to the recent sequestration-induced hiatus. A single ivory or rhino horn investigation can occupy up to 30 agents and take 18

⁸⁰ *United States v. Bengis*, 631 F.3d 33, 40 (2d Cir. 2011); 18 U.S.C. § 3663A(a)(1); § 3663(a)(1)(A) (2014).

⁸¹ *Bengis*, 631 F.3d 40; The MVRA provides for mandatory restitution in all sentencing proceedings for convictions of any offense that is, inter alia, "an offense against property under [Title 18 of the U.S.C.] ... in which an identifiable victim or victims has suffered a ... pecuniary loss."

⁸² *Id.*

months.⁸³ (Despite funding short-falls, FWS and DOJ have amassed a remarkable record of wildlife trafficking prosecutions. *See* Appendix A for examples of prominent, recent enforcement actions.)

Federal officials have not clarified how they plan to increase staff levels in light of the newly announced enforcement strategy, but one recent noteworthy development occurred in January, when the Service, with assistance from the State Department and USAID, stationed Agents at U.S. embassies as international attaches, with two in Africa, two in Asia, one in South America, to coordinate investigations of wildlife trafficking and support wildlife enforcement capacity-building.

We recommend that the Advisory Council work with the Administration and identify a cross-agency wildlife trafficking budget that is sufficient to enable the U.S. to be a world leader in detecting and prosecuting wildlife trafficking crimes.

⁸³ *Id.*

III. U.S. Engagement in International Efforts to Curb Illegal Wildlife Trafficking

A. Enhancing Enforcement in Range Nations

A number of African range countries have been requesting assistance from the United States and other nations to combat increasingly sophisticated, organized and well-armed poaching networks that are killing elephants and rhinos in large numbers. One approach discussed in several recent reports, including the 2013 Congressional Research Service Report⁸⁴ and the 2013 National Intelligence Council (NIC) report referenced by former Secretary Clinton, is to provide “material and training” support to national and local law enforcement in African range countries.⁸⁵

Given the scope of the crisis and insufficient resources and capacity across range countries to sufficiently quell this scourge, initial instinct is that U.S. military assistance could support anti-poaching surges by providing training and equipment to range country military and law enforcement. This approach is consistent with D.O.D. Security Assistance programs, which include training programs, wherein the Pentagon or “State Department...foreign aid budget” funds U.S. military to train “foreign troops in the use of U.S.-supplied equipment and in U.S. military doctrine and tactics.”⁸⁶

There are significant policy and practical issues associated with providing direct military and/or law enforcement assistance to African nations. In some nations, criminal poaching networks have corrupted indigenous authorities at all levels – including front-line rangers, police and military personnel, ministries overseeing such personnel, and even prosecutors and judges. According to a 2013 NIC report, the Council has “high confidence that traffickers use sophisticated networks and the complicity of public officials in order to move ivory and rhino horn to ... ports of export, perpetuating corruption and border insecurity in key eastern, central, and southern African states.”⁸⁷

Corruption in range nations greatly complicates the desire that U.S. authorities and others (including individual philanthropists) have to bolster the local law enforcement capabilities who increasingly are no match for well-armed and sophisticated poaching operations. Indeed, given the realities of serious corruption in many range countries, when sophisticated hardware, arms or other assistance is provided to park rangers, police and military personnel, there is a serious concern that the assets may be compromised and potentially used to aid anti-poaching efforts.

Because of corruption issues, there is strong interest in providing assistance to organizations in African nations that have complete control over the integrity of their operations. That is one reason why the African Parks model of taking delegated control of troubled protected areas has attracted so much attention in recent years. Interest in U.S. military involvement in

⁸⁴ Wyler, L.S. & Sheikh, P.A. (July 23, 2013). International Illegal Trade in Wildlife: Threats and U.S. Policy. Washington, D.C.: Congressional Research Service, 7-5700.

⁸⁵ National Intelligence Council. (September 6, 2013). Wildlife Poaching Threatens Economic, Security Priorities in Africa.

⁸⁶ FAS. (1999). US International Security Assistance Education and Training. *Federation of American Scientists*. <<http://www.fas.org/asmp/campaigns/training.html>>.

⁸⁷ NIC 2013, p.1

helping range countries fight off poachers is also high because of its insistence on the integrity of its partners, and the connection between lucrative poaching operations and U.S. national security.

- **Parameters for Potential U.S. Military Assistance in Anti-Poaching Efforts**

In instances in which wildlife trafficking is linked to terrorism or insurgencies, the U.S. military may have provisional authority to train civilians in foreign countries who are engaging in law enforcement activities. The U.S. military has clearer authority under AFRICOM to support foreign military efforts to combat wildlife trafficking.

The following excerpts from the Legal Considerations (Appendix D⁸⁸) of the U.S. Army *Field Manual on Counterinsurgency. FM 3-24*, outline the limitations of military activity abroad. Since counterinsurgency and counterterrorism are two areas in which U.S. military force can be applied abroad, excerpts from these Legal Considerations, as they apply to U.S. military and civilian actions and limitations on those actions, are relevant:

(D3) GENERAL PROHIBITION ON ASSISTANCE TO POLICE

- DOD is usually not the lead governmental department for assisting foreign governments, even for the provision of security assistance—that is, military training, equipment, and defense articles and services—to the host nation's military forces.
- DOD's contribution in terms of assistance to foreign governments may be large, but the legal authority is typically exercised by the Department of State.
- With regard to the provision of training to a foreign government's police or other civil interior forces, the U.S. military typically has no authorized role.
- The Foreign Assistance Act specifically prohibits assistance to foreign police forces except within carefully circumscribed exceptions, and under a Presidential directive. The lead role in providing police assistance within those exceptions has been normally delegated to the Department of State's Bureau of International Narcotics and Law Enforcement Affairs.

Although the U.S. military has provisional authority to train and provide support for non-military law enforcement activities when there is a potential terrorism connection, there are limitations on such authority, including an expectation that the U.S. military should receive waivers from Congress and the foreign government before it can work with civilian organizations on the ground. Given the lack of clarity regarding where authority begins and ends, the U.S. military typically has not been involved in helping civilian authorities fight wildlife traffickers, despite the fact that park rangers and local law enforcement assets typically are on the front lines of armed confrontations with wildlife traffickers.

It also is noteworthy that the U.S. military, acting through AFRICOM, has not yet upgraded the low priority that it traditionally has given to wildlife trafficking issues, even though recent evidence has linked wildlife trafficking with the funding of arms sales, terrorist organizations and regional instability. As a result, even in range countries in which poaching as

⁸⁸ US Army (2006). Appendix D, Legal Considerations, Counterinsurgency. *Field Manual FM 3-24*. Central Army Registry. Retrieved January 22, 2014, from <https://rdl.train.army.mil/catalog/view/100.ATSC/41449AB4-E8E0-46C4-8443-E4276B6F0481-1274576841878/3-24/appd.htm>

been deemed a domestic military issue, and where the U.S. military has the authority to provide assistance, AFRICOM typically has stayed on the sidelines.

- **Closing the Authority Gap**

We recommend that the Task Force work with the Defense Department and, if necessary, the Congress to make AFRICOM training and equipment available to help range countries fight wildlife traffickers. More specifically, *we recommend that AFRICOM policy that restricts extending such assistance to non-military personnel should be amended and/or clarified to allow for such assistance in those cases in which there is evidence that traffickers are connected with armed conflicts and/or terrorist groups. In addition, we recommend that Congress go to the heart of the matter and provide the U.S. military with discretionary authority to provide training and equipment to both civilian and military law enforcement personnel in support of anti-poaching initiatives in range countries.* We note, in this regard, that Congress passed a special law in 2010 giving the military broad authority to address the threat posed by Joseph Kony, leader of the LRA.⁸⁹ In so doing, Congress demonstrated its willingness to provide the U.S. military with broader authority to address internal African arms-related instability, when doing so serves U.S. international security goals.

- **Training Range Country Prosecutors and Judges**

Due to capacity constraints and corruption, poaching- and smuggling-related offenses often receive poor and/or inconsistent attention by prosecutors and judges in range countries. In many cases in which there is strong evidence implicating poachers, middlemen, and kingpins, prosecutions do not proceed forward. And when prosecutions do go forward, many local judges are unwilling to impose harsh sentences on wildlife traffickers.

Corruption of the law enforcement and judicial system is not easily remedied. However, the reluctance of some prosecutors and judges to prioritize wildlife trafficking as a serious crime can be addressed, to some extent, with awareness raising, education and training. *We recommend that the Administration evaluate how the U.S. and other nations might help address this issue, through additional legal education and training programs for judges and prosecutors.*

- B. Beefing Up International Enforcement Efforts Against Wildlife Trafficking Kingpins**

- 1. Implementing the President's Transnational Organized Crime Strategy**

In 2011, the President released a Strategy to Combat Transnational Organized Crime (TOC). The 2011 Strategy document focused on drug, arms and human trafficking, and not wildlife trafficking. Pursuant to Section 4(c) of the President's Wildlife Trafficking Executive Order, however, we understand that the Task Force is (or will be) applying the TOC Strategy to wildlife trafficking as well. *We recommend that the specific steps laid out by the President's 2011 Strategy to Combat Transnational Organized Crime (TOC) be vigorously applied to*

⁸⁹ White House. (May 24, 2010). Statement by the President on the Signing of the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009. Office of the Press Secretary, The White House.

wildlife trafficking. We believe that going after major trafficker kingpins will be one of the most effective strategies in ending current elephant and rhino poaching crisis.

The 2011 TOC Strategy document identified a number of initiatives that have the potential to completely transform U.S. efforts to identify and bring to justice the major international players who are engaged in wildlife trafficking activities. Relevant proposals and recommendations from the 2011 TOC Strategy include:

- Protect the Financial System from Infiltration
 - Implement a new Executive Order to prohibit transactions and block the assets under U.S. jurisdiction of TOC networks and their associates that threaten U.S. interests.
 - Continue use of economic sanctions under the Foreign Narcotics Designation Act (Kingpin Act) whose purpose is to deny significant foreign narcotics traffickers, their related businesses, and their operatives access to the U.S. financial system and to prohibit all trade and transactions between the traffickers and U.S. companies and individuals. The Kingpin Act authorizes the President to take these actions when he determines that a foreign person plays a significant role in international narcotics trafficking. The Act may also be used to prosecute persons involved in illegal activities linked to drug traffickers, such as arms trafficking, bulk cash smuggling or gang activity.⁹⁰
 - Increase awareness and provide incentives and alternatives for the private sector to reduce facilitation of TOC.
 - Develop a mechanism that would make unclassified data on TOC available to private sector partners.
 - Use authorities under the USA Patriot Act to designate foreign jurisdictions, institutions or classes of transactions as “primary money-laundering concerns,” allowing for the introduction of various restrictive measures on financial dealings by U.S. persons with those entities.
 - Provide increased support of the work of the Financial Action Task Force (FATF), an intergovernmental body which sets and enforces global standards to combat both money laundering and the financing of terrorism.
- Strengthen Interdiction, Investigations and Prosecutions
 - Work with Congress to enhance the authorities available to investigate, interdict and prosecute the activities of top transnational criminal networks.
 - Issue new Presidential Proclamation under the Immigration and Nationality Act to deny entry to TOC-affiliated aliens, foreign corrupt officials and other persons designated for financial sanctions pursuant to the Emergency Economic Powers Act.
 - Utilize rewards programs to assist in gathering information leading to the arrest or conviction of top transnational criminals (see below).

⁹⁰ The White House, Office of the Press Secretary, Overview of the Foreign Narcotics Kingpin Designation Act, http://www.whitehouse.gov/the_press_office/Fact-Sheet-Overview-of-the-Foreign-Narcotics-Kingpin-Designation-Act (April, 2009).

- Increase Information Gathering and Sharing
 - Interagency Threat Mitigation Working Group will identify those TOC networks that present a sufficiently high national security risk and ensure the coordination of all elements of national power.
 - Employ the Director of National Intelligence Open Source Center to draw upon “grey” literature, smaller press outlets that cover crime in foreign countries, and social media fora to develop profiles of individuals, companies and institutions linked to TOC networks.
 - Develop protocols to ensure appropriate TOC data flows to agencies conducting screening and interdiction operations to disrupt TOC activities at the border and critical points of the supply chain.

- Enhance International Capacity, Cooperation and Partnerships
 - Partner with nations who have the will to fulfill international law enforcement commitments but lack the means to develop stronger law enforcement and criminal justice institutions necessary for ensuring the rule of law. It will also leverage legal instruments such as the UN Convention against Transnational Organized Crime to obtain the assistance of international partners and to raise the international criminal justice, border security and law enforcement standards.⁹¹

2. Increasing the Use of the Transnational Organized Crime Reward Program

Established by Congress in 2013, the Transnational Organized Crime Rewards Program assists the government in identifying and bringing to justice members of significant transnational criminal organizations. The program gives the Secretary of State statutory authority to offer rewards for information leading to the arrest and/or conviction of members of transnational criminal organizations who operate outside the United States.⁹²

Ahead of the ivory crush, Secretary Kerry announced a \$1 million reward for tips leading to the disruption of the Xaysavang Network, a Laos-based criminal enterprise that "facilitates the killing of endangered elephants, rhinos and other species." In an example of wildlife trafficking's role in the transnational organized crime, the organization has affiliates in South Africa, Mozambique, Thailand, Malaysia, Vietnam and China and profits from the syndicate's wildlife trafficking — estimated to be as much as \$10 billion annually — fund other illegal activities, including narcotics, arms and human trafficking, according to the State Department.⁹³

⁹¹ The White House, Strategy to Combat Transnational Organized Crime, <http://www.whitehouse.gov/sites/default/files/microsites/2011-strategy-combat-transnational-organized-crime.pdf> (July 2011).

⁹² U.S. Department of State, Transnational Organized Crime Rewards Program, <http://www.state.gov/j/inl/tocrewards/>.

⁹³ “US crushes 6 tons of illegal ivory to send message to poachers, traffickers,” *NBC News*, Nov. 14, 2013, <http://www.nbcnews.com/news/us-news/us-crushes-6-tons-illegal-ivory-send-message-poachers-traffickers-v20807269>.

Secretary Kerry's initiative is the first time the program has been used to combat wildlife trafficking. We applaud use of the program in the wildlife trafficking context and urge its expanded use to provide substantial rewards for the prosecution and conviction of wildlife trafficking kingpins.

3. Enhancing International Law Enforcement Cooperative Activities

For a variety of reasons touched upon above, focusing on the larger players in the criminal syndicates who are controlling the export, shipment and delivery of illegal wildlife parts may provide the most effective way to disrupt trafficking networks.

- **Employing U.S. Military and Other Intelligence Assets to Disrupt Wildlife Trafficking Networks**

The United States government potentially can play a key role in identifying, and then interdicting, shipments of ivory and rhino horn at the port of exit from a range country, during transshipment, or upon the port of entry. In particular, military intelligence assets, combined with other U.S. intelligence assets, clearly can inhibit the international transshipment of trafficked wildlife goods. *Building on the successful deployment of intelligence assets to disrupt drug trafficking efforts in the Caribbean, including the use of high tech capabilities such as unmanned aerial vehicles (UAVs),⁹⁴ we propose that U.S. military intelligence work with other U.S. intelligence agencies to track, trace, and stop ivory and rhino horn from leaving Africa and/or to interdict such traffic before it reaches consumer nations.*

- **Employing Regional Law Enforcement Organizations to Target Criminal Syndicates Involved in Wildlife Trafficking**

In addition to U.S.-based intelligence, regional law enforcement organizations can be helpful in identifying and bringing to justice the larger players in criminal syndicates. The National Strategy calls for greater cooperation between regional Wildlife Enforcement Networks (WENs) that are already operating in a number of regions as well as the development of additional regional WENs to enhance global cooperation and capacity. The Association of

⁹⁴ Promoted by public-private partnerships, UAVs are already being used successfully in Nepal, India, and Kenya for patrolling remote areas in wildlife parks to deter poachers. Bergen, J. (May 1, 2013), Public-private partnerships essential to combat poaching, *World Politics Review*. Retrieved January 22, 2014, <http://www.worldpoliticsreview.com/articles/12907/public-private-partnerships-essential-to-combat-poaching>.

Limited but promising research indicates UAVs are having a deterrence effect on poaching. For example, in Nepal in 2011, Google and the World Wildlife Fund began deploying drones in an anti-poaching effort. Before this intervention, poachers killed approximately 12 rhinos each year; during the two-year period in which the drone program has been in place, however, no rhinos have been killed.

However, unlike in the Caribbean drug interdiction initiatives, UAV technology has not been implemented to specifically track poachers and to identify individual actors involved in the supply chain. Further proliferation of this technology through a broader, coordinated intelligence community focus on illegal wildlife trafficking could facilitate better international intelligence gathering of actors in the supply chain to build a comprehensive database for national and international law enforcement, and allow for necessary accountability enforcement. Bergen, J., Stohl, R. & Georgieff, A. (2013), Other side of drones: Saving wildlife in Africa and managing global crime, *The Stimson Center, Accord issue 3*. http://www.stimson.org/PDFs/OtherSide_of_Drones.pdf.

Southeast Asian Nations Wildlife Enforcement Network (ASEAN WEN) is a wildlife law enforcement intergovernmental network comprised of ten nations, including Thailand, Vietnam and the Philippines. It works closely with CITES and INTERPOL. In addition to annual meetings, there are frequent workshops and training for all member nations with the goal of improving the law enforcement response to wildlife crimes and increasing coordination with each other and internationally.⁹⁵ In the long-term, ASEAN-WEN also aims to encourage more prosecutions, maintain political will for the initiative, and increase awareness of the initiative amongst the public and law enforcement officers.⁹⁶ Founded on the model of ASEAN WEN in 2011 and comprised of eight nations, the South Asia Wildlife Enforcement Network (SAWEN), is more limited in scope, but signals a willingness of the nations involved to address wildlife trafficking.⁹⁷

In addition, five international organizations joined forces in late 2010 to create the International Consortium on Combating Wildlife Crime (ICWC) to coordinate support to the national wildlife law enforcement agencies and to the sub-regional and regional networks that, on a daily basis, act in defense of natural resources. The ICWC is comprised of the CITES Secretariat, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank and the World Customs Organization (WCO). The CITES Secretariat chairs the alliance. It seeks to ensure that the perpetrators of serious wildlife crimes will face a more formidable and coordinated response and that it will deploy modern techniques and technologies when tackling wildlife crime, including controlled deliveries and the use of wildlife forensics. It also seeks to address the flow of money associated with the illicit trade and asset forfeiture and corruption.⁹⁸ The ICWC is particularly important because its partners are high-profile organizations with substantial global influence; the potential to increase awareness and improve law enforcement capacity across the world is a possibility if enough outreach and resources are invested in this initiative.⁹⁹

4. Imposing Sanctions Against Non-Compliant Nations

In addition to law enforcement against kingpins and other individuals who are engaged in criminal wildlife trafficking, *we recommend that the United States develop and implement a strategy under the CITES framework to impose serious sanctions against nations that are not living up to their responsibilities under CITES.*

- **Background**

⁹⁵ Tanya Wyatt, *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders* Basingstoke (Basingstoke: Palgrave Macmillan, 2013), 144.

⁹⁶ TRAFFIC, <http://www.traffic.org/asean-wen/>.

⁹⁷ Wyatt, *Wildlife Trafficking*, 146.

⁹⁸ John M. Sellar, *Policing the Trafficking of Wildlife: Is there anything to learn from law enforcement responses to drug and firearms trafficking?*, <http://www.rhinoowners.org/WYSI/assets/SRP%20DOCS/Global%20Initiative%20-%20Wildlife%20Trafficking%20Law%20Enforcement%20-%20Feb%202014.pdf> (Feb. 2014).

⁹⁹ Wyatt, *Wildlife Trafficking*, 150; The main partner in ICWC and an important global collaborative addressing wildlife trafficking, INTERPOL plays a vital role in facilitating transnational investigations. INTERPOL is a quasi-government agency which operates as an information clearinghouse for cross-border law enforcement activities. It receives and compiles data relating to significant seizures, incidents, and arrests, which it posts to its secure i24/7 intelligence database. Its other strength after reporting is training. Because it lacks authority, it has no compliance or enforcement mechanism and minimal operational capabilities.

CITES is designed to maintain the wildlife trade (through regulation); its mission is to draft provisions that will enable trade to continue.¹⁰⁰ The history of CITES-based sanctions is limited, and there are many questions about whether and, if so, how sanctions might be imposed against noncompliant countries. CITES compliance has evolved through secondary rules (resolutions and decisions of the Conference of the Parties) and practice over nearly three decades on the basis of broad provisions set out in various articles of the treaty. These broad provisions mandate that (1) parties report regularly on CITES trade and measures to implement and enforce the treaty; (2) the Secretariat review national reports, communicate problems on implementation to parties and make recommendations; (3) parties respond with remedial action and report to the CoP; and (4) the CoP review parties' responses and make recommendations.¹⁰¹

The procedure in place since 1989 to deal with countries who persistently fail to implement the Convention provides for due notice to be given to the non-compliant party, time to respond, the provision of advice and technical assistance by the Secretariat, and notification to the parties and the CoP. It also mandates that the Standing Committee pursue the matter with the party concerned and "find a solution." The procedure does not, however, specify the measures to be taken in cases of non-compliance, which have evolved through practice on the basis of advice from the Secretariat. They include the provision of security paper for permits and certificates; a requirement that the Secretariat confirms permits; a formal warning; a suspension of cooperation by the Secretariat; verification missions; a recommendation by the Standing Committee to suspend trade in CITES species; and specification by the Standing Committee of action to be taken before a suspension is lifted.¹⁰²

To address a persistent failure by parties to provide annual reports on their CITES-related trade, in 2000 the CoP decided that parties failing to provide reports for three consecutive years and failing adequately to justify this shortcoming would be subject to a recommendation to suspend all trade in all CITES species. The Secretariat identifies the offending parties and the Standing Committee makes the recommendation for a suspension.¹⁰³

Recommended trade suspensions can be divided into two types: country-specific suspensions of trade in all CITES species, and species-specific suspensions of trade in Appendix II-listed species under the significant trade review. The former may be recommended for persistent generalized non-compliance, lack of adequate national legislation and failure to demonstrate legislative progress under the national legislation project, and persistent failure to submit annual trade reports. The CITES Secretariat will issue notifications informing member states that failure to implement the necessary legislation constitutes a violation of the treaty, and that repeated failure to enact such legislation will result in penalties, such as trade sanctions. Trade sanctions generally recommend that member states temporarily suspend wildlife trade with countries that are in noncompliance with CITES. As a result, these are considered voluntary suspensions and not binding.¹⁰⁴

¹⁰⁰ *Id.*, at 113.

¹⁰¹ Rosalind Reeve, "Wildlife Trade, Sanctions and Compliance: Lessons from the CITES Regime," 82 *International Affairs* 5, 886-87, 889 (2006).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Zimmerman, *The Black Market for Wildlife*, 1666-67.

Since 1985, trade suspensions for generalized non-compliance have been recommended on fewer than ten occasions. Examples include the United Arab Emirates, for failure to prevent illegal trade in falcons; Russia for failure to combat the illegal caviar trade; and Fiji and Vietnam for failure to enact sufficient national wildlife trade legislation.¹⁰⁵ Since 1999, 17 parties have been subject to recommended trade suspension for failure to submit annual reports.¹⁰⁶ At the most recent CoP in March, 2013, CITES imposed trade sanctions on Guinea, for persistent violation of a ban on the export of great apes.¹⁰⁷

- **Potential Trade Sanctions Under CITES for Non-Compliant Wildlife Trafficking Nations**

CITES trade sanctions can pack a punch. Countries hit with trade sanctions typically react quickly to address deficient national legislation and enforcement, even though the CITES treaty does not provide any enforcement mechanism for such sanctions.¹⁰⁸ Currently, the so-called gang of eight, source countries Kenya, Tanzania and Uganda, countries through which ivory is smuggled, Malaysia, Vietnam and the Philippines, and destination countries, Thailand and China, are on something of a sanctions watch. These eight countries were given until the July, 2014, Standing Committee meeting to produce hard action plans to address the movement of illegal wildlife parts from, through and/or to their nations, in violation of CITES. If the reports submitted in a few months are deficient, CITES trade sanctions can be imposed against these countries.¹⁰⁹ *We recommend that the U.S. CITES delegation make its intentions clear to aggressively pursue economic sanctions against countries that are not taking strong action to prevent the illegal export, transshipment or import of wildlife products under CITES.*

- **Potential Use of the Pelly Amendment**

The United States has another potentially powerful and effective tool to impose sanctions against non-compliant nations through the Pelly Amendment. The Pelly Amendment authorizes the President to impose trade sanctions against a country that the Secretary of Commerce or the Secretary of Interior has certified as undermining CITES or any other international program for endangered or threatened species.¹¹⁰

Although the U.S. has officially certified a number of nations as being non-compliant with CITES or other international species requirements, it has only rarely imposed sanctions under the Pelly Amendment. Often, the threat of Pelly Amendment sanctions has been enough to influence other nations. A prominent example occurred in 1994 when then-President Clinton banned all wildlife trade with Taiwan after the Secretary of the Interior certified Taiwan as undermining CITES by trading in rhino horn and tiger parts.¹¹¹ Taiwan responded by increasing

¹⁰⁵ Lisa Mastny and Hilary French, “Crimes of (a) Global Nature,” *World Watch Magazine*, Sept.-Oct. 2002, <http://www.worldwatch.org/system/files/EP155A.pdf>.

¹⁰⁶ Zimmerman, *The Black Market for Wildlife*, 1667.

¹⁰⁷ “Guinea sanctioned for illicit wildlife trade, including great apes,” WWF, last modified March 2, 2013, <http://wwf.panda.org/?207734/Guinea-sanctioned-for-illicit-wildlife-trade-including-great-apes>.

¹⁰⁸ Reeve, *Wildlife Trade*, 890.

¹⁰⁹ Damian Carrington, “Stop ivory poaching or face sanctions, nations warned at Cites,” *The Guardian*, March 6, 2013, <http://www.theguardian.com/environment/2013/mar/06/ivory-poaching-sanctions-cites>.

¹¹⁰ 22 U.S.C. § 1978 (2014).

¹¹¹ Paul C. Lin-Easton, “Ending the Siege on America’s Bears: Implementing GATT-Consistent Pelly Sanctions Against Bear-Trading Nations,” *2 Asian-Pacific Law & Policy Journal* 197, 209 (2001).

wildlife seizures, imposing stricter penalties for wildlife trafficking, and amending its wildlife conservation law.¹¹² Although the trade embargo had some economic impact (twenty million dollars in Taiwanese products were affected), the effectiveness of the ban was mostly attributed to political reasons. Taiwan’s leaders “were embarrassed by the displeasure of a long-time ally,” demonstrating the power of political pressure from the U.S.¹¹³

We recommend that United States authorities give careful consideration to persuasive Pelly Amendment petitions and seriously consider relying on Pelly Amendment authority to impose trade sanctions on countries that are violating CITES – particularly if the CITES Secretariat is slow to recommend sanctions against countries that are not adequately addressing trafficking problems. The upcoming reports of the eight nations identified above will provide a timely record against which Pelly Amendment petitions can be judged in terms of whether such countries are taking serious steps to get their illegal wildlife trafficking activities under control.

In order to proceed in a more orderly fashion to review and potentially act upon Pelly Amendment petitions, we also recommend that the U.S. Fish and Wildlife Service establish a regulatory framework that establishes a formal process to review and act upon Pelly Amendment petitions, including time-lines and opportunities for public input.

¹¹² *Id.* at 210.

¹¹³ *Id.* at 211.

IV. Participating in International Efforts to Combat Rhino Horn Trafficking

As noted in the introductory section of this submittal, rhinos are in danger of becoming extinct in the wild due to the widespread and accelerating killing of rhino for their horn. Rhinos were once abundant throughout Africa and Asia with an approximated worldwide population of 500,000 in the early twentieth century. The Western black rhino was declared extinct by the IUCN (International Union for Conservation of Nature) in 2011, with the primary cause identified as poaching. In fact, all five remaining rhino species are listed on the IUCN Redlist of threatened species, with three out of five species classified as critically endangered.

There are several unique features associated with the trade in rhino horn that bear upon the choice of strategies in combating illegal trafficking in horn, and which necessitate a separate discussion about how the U.S. can most effectively participate in international efforts to stop the killing of rhinos. These unique features are discussed here, followed by recommendations.

- **Lack of Inherent Value in Rhino Horn**

Unlike ivory, the market for rhino horn is not driven by the beauty and craftsmanship associated with ivory carvings and the traditional value placed on such carvings. Rather, rhino horn is sought after based on assumed properties that the horn does not, in fact, have. Bluntly stated, rhino horn has no inherent value for the primary purposes for which it is sought after.

Rhino horn is composed of keratin. As such, it is a common material that is unusual only in the size and shape that it forms on rhinos. Both traditional and modern preparation of rhino horn medicines typically involves grinding the horn into a powdered form, which is then placed in hot water to produce a white, cloudy liquid. In Vietnam, special porcelain bowls with a rough serrated bottom for the home preparation of rhino horn are now widely available.

Rhino horn has been primarily sought after in Asia as a constituent in Traditional Chinese Medicine (TCM). TCM uses herbs and animal products to create harmony and balance in the body. Some TCM practitioners assert that rhino horn reduces fevers and convulsions, and that it also can help control hemorrhaging, rheumatism, gout, and other disorders. It has been stated that “according to the 16th century Chinese pharmacist Li Shi Chen, rhino horn also can cure snakebites, hallucinations, typhoid, headaches, carbuncles, vomiting, food poisoning, and “devil possession.”¹¹⁴

Trade patterns indicate that the resurgent demand for rhino horn is driven primarily by users from Vietnam. Many in Vietnam apparently believe in the detoxification properties of rhino horn, especially following excessive intake of alcohol. Likewise rhino horn is promoted in Vietnam as an effective treatment, and potential cure, for life-threatening diseases such as cancer, despite the complete absence of medical evidence supporting such claims.¹¹⁵ Researchers were told stories of important individuals who had cancer but were cured following treatment with rhino horn.

¹¹⁴ <http://www.pbs.org/wnet/nature/episodes/rhinoceros/rhino-horn-use-fact-vs-fiction/1178/>

¹¹⁵ Milliken, T., & Shaw, J. (2012), The South Africa – Viet Nam rhino horn trade nexus: A deadly combination of institutional lapses, corrupt wildlife industry professionals and Asian crime syndicates. TRAFFIC, Johannesburg, South Africa.

Rhino horn does not, in fact, have any of the medical or mystical properties for which it is being sold. Sellers are hawking horn's curative powers as a cynical marketing ploy to increase the profitability of the illegal rhino horn trade. In so doing, they are taking advantage of the increasing prosperity in the Vietnamese economy and the apparent social acceptability of using rhino horn as a way to demonstrate one's affluence and social status.

Given that rhino horn has no inherent value, and is being sold illegally and under a false pretense, there is a powerful inherent reason to discourage any commercial trade in rhino horn. With the black market commanding prices as high as \$60,000 for a large rhino horn, and fueling the destructive killing of an alarming number of the remaining rhinos in the wild, there is an even more powerful rationale for enforcing the current ban on the export and import of rhino horn.

- **Regulatory Restrictions on Commercial Trade in Rhino Horn**

Currently all black rhino are categorized as critically endangered and are listed in Appendix I of CITES (threatened with extinction and trade in these is not allowed unless there are extraordinary circumstances) with South Africa and Namibia each permitted a hunting quota for black rhino per annum. White rhino are categorized as threatened and are also listed in Appendix I of CITES, other than South African and Swaziland, which have annotated partial down-listings for live sales to appropriate and acceptable destinations and for the export of hunting trophies. No trade in loose horn or any other specimens of rhino, for commercial purposes, is currently allowed.

- **Hunting Allowances**

Hunting allowances for rhino have generated some controversy. Hunting of white rhino in South Africa was re-introduced in 1968 and is widely credited with having contributed positively to biological management, the generation of revenue for conservation and increased incentives to promote effective population growth.¹¹⁶ Hunting and related industries are estimated to employ approximately 70,000 people¹¹⁷ in South Africa, largely in rural areas, and include trackers, professional hunters, veterinarians, and capture specialists. Historically, hunters were of South African, European and North American origin, but since 2003, with the resurgence in demand for rhino horn in certain Asian countries, more hunters from these areas have been seeking permits, raising concerns that hunting is being undertaken to harvest rhino horn for illegal sale. Unfortunately however, hunting permitting systems have been abused by criminal private sector elements as well as corrupt public sector officials, to the detriment of the rhino.

We recommend that range countries ensure that the limited hunting allowances allowed for rhinos are not used as a mechanism to market rhino horn. Toward that end, the

¹¹⁶ It is estimated that from 1995 to 2011, approximately 1,300 white rhino have been legally hunted in South Africa. Milliken & Shaw, 2012

¹¹⁷ <http://www.africanhuntinginfo.com/en/homepage/news/183-bulletin-october-2013/352-rsa-hunting-industry-statistics>

United States should advocate that where CITES allows for limited hunting of listed species, host nations should adopt an integrated, international hunting permit system that regulates the hunting and also effectively documents, tracks and manages hunting trophies.

○ **Potential Legalization of Trading in Rhino Horn**

With a growing percentage of the remaining rhinos in South Africa being raised on private ranches, some owners are interested in lifting the current ban on commercial trade in horn, so that horn can be harvested from captive rhinos and resulting revenue can be used to support the costs of maintaining privately-held animals. Unlike elephants, horn can be removed from rhinos without killing the animals.

Proponents of trade argue that the ban on commercial trade in rhino horn has not been effective. They assert that limiting the supply of rhino horn has simply raised the price of rhino horn on the black market and provided an additional incentive for illegal poaching activity. In their view, providing a legal supply should reduce the price and the pressure to kill rhinos for their horn. In addition, private rhino owners are advocating for the opportunity to harvest the horn and legally sell it to offset costs of protection and management of rhino herds.

One commentator, Michael ‘t Sas-Rolfes, has argued that the ban on trade in rhino horn has increased the incentive to kill rhinos.¹¹⁸ He notes that retail prices of rhino horn rose steeply in significant consumer markets such as Taiwan, South Korea, Japan and Yemen following the ban in the mid-1970s. This led to an escalation in poaching across Africa in the 1980s and resulted in the decimation of unprotected black rhino populations in several countries including Tanzania, Zambia and Zimbabwe. Today, the illegal demand for rhino horn is stronger than ever and driving a new wave of intense poaching.

Under normal circumstances, with healthy populations of rhinos, this could be a persuasive argument. As it is, however, there is a significant question whether introducing legal trade in rhino horn would reduce prices and disincentivize poaching rhino populations. Indeed, there are several strong reasons why it appears to be extremely unlikely that the CITES parties would lift trade restrictions on rhino horn and allow trade in horn. They include:

- Rhino populations have plunged in recent years and the population in the wild is under severe poaching pressure that threatens sustainable populations in the wild. Given the apparent inelasticity in demand for rhino horn, it may be too great a risk to the shrinking populations of rhinos in the wild to test an unproven theory that privately-owned, captive rhinos could produce enough horn to satiate demand and drive down prices.
- The decision by CITES to allow for the legal sales of ivory through so-called “one time” sales is instructive in this regard. The theory was the same: that providing more legal supply into the marketplace should reduce prices and help lower

¹¹⁸ Sas-Rolfes, M. (2012), The Rhino Poaching Crisis: A Market Analysis. *See generally* <http://perc.org/blog/qa-michael-t-sas-rolfes-why-legal-rhino-horn-trade-will-save-rhinos>

demand. Actual experience was the opposite. The introduction of new, legal ivory into the marketplace provided cover for illegal ivory to be sold into the market. Also, the inherent restriction on the supply of ivory – due to diminishing elephant stocks – meant that additional supply was insufficient to dampen either the level of demand or ivory's price.

- One must question whether it is a sound wildlife management philosophy to promote the sale of a wildlife part – rhino horn – that has no intrinsic value, and which is relying on patently false assertions of horn's medical value to command high market prices.

In addition to farming, widespread de-horning of rhinos has also been considered to protect the species and to perhaps justify trade in rhino horn. However, three key factors make this unfeasible. First, it is an enormous logistical challenge to physically track, immobilize and de-horn a rhino. Second, the horn continues to re-grow so the process needs to be constantly applied. Third, de-horning does not necessarily reduce poaching insofar as poachers may not be deterred from shooting a de-horned rhino, either because they do not see the animal's horn before killing it, or because they kill the animal to avoid tracking it again.

For all of these reasons, it is virtually inconceivable that the CITES parties would agree to lift the ban on the commercial sale of rhino horn. ***Because South African interests nonetheless are expected to push for a change in CITES policy, we recommend that before the next CITES CoP, the United States and/or the CITES Secretariat should commission an analysis of the potential impacts associated with lifting the trade ban on rhino horn and evaluate the likelihood of whether lifting the ban would reduce the demand for rhino horn and, as a result, reduce poaching pressures on rhinos in the wild.***

V. Institutional Initiatives to Help Address the Wildlife Trafficking Crisis

The National Strategy document highlights the importance of pursuing a number of institutional initiatives that can help in addressing the wildlife trafficking crisis. We have focused in this submittal on four specific areas in which institutional attention to trafficking-related issues play an important role in combatting the trafficking scourge. They include:

- (1) Creating public/private partnerships with the business community to crack down on illegal trafficking and draw attention to the crisis;
- (2) Helping to coordinate the NGO community the business community to crack down on close public/private/NGO cooperation;
- (3) Promoting and investing in sound, community-based sustainable wildlife protection models in range nations; and
- (4) Developing a credible, African-based information hub that will provide baseline populations data and other important data about illegal trafficking activity that can help focus resources on high risk target areas and review the success or failure of enforcement efforts.

A. Pursuing Public/Private Partnerships with the Business Community

One of the stated goals of the National Strategy for Combatting Wildlife Trafficking is to “Build international cooperation, commitment and public-private partnerships.”¹¹⁹ It also notes that the Task Force is in a unique position to “promote effective partnerships” and “encourage development of innovative approaches”¹²⁰ in working with its allies. Public-private partnerships already are key elements of conservation efforts worldwide, and they will be even more important moving forward.

The President’s Wildlife Trafficking Executive Order (“E.O.”) established an Advisory Council made up of experts in the NGO and business world to ensure that the Task Force’s implementation of the Executive Order extends beyond government-only efforts and enlists the support of private businesses and non-governmental organizations in a meaningful way. The National Strategy document recently issued under the E.O. reemphasizes this key point, *noting that the Advisory Council “will . . . collaborate where appropriate with [] nongovernmental organizations and the private sectors to ensure success. . . . In all of our endeavors, we must foster and strengthen partnerships with other governments, the nonprofit conservation community, and the private sector.”*¹²¹ Others have made the same point. The recent London Conference sponsored by Prince William and Prime Minister Cameron recognized “the important role that non-governmental organisations [sic], academic institutions and the private sector can play in actions against the illegal wildlife trade.”¹²²

Creating and strengthening partnerships between the government and business groups has the potential to materially advance the effort to combat both the supply and demand for illegally trafficked wildlife goods. On the business front, eBay already has stepped up and adopted a

¹¹⁹ National Strategy (February, 2014), 11.

¹²⁰ *Id.*

¹²¹ National Strategy for Combating Wildlife Trafficking (February, 2014), 12.

¹²² London Conference on The Illegal Wildlife Trade, Declaration, 13 (Feb. 12-13, 2014).

clear policy that prohibits trade in ivory products on its internet trading platform.¹²³ Many other businesses provide services or otherwise have interests that are potentially implicated by illegal wildlife trafficking. As the Strategy points out,¹²⁴ shipping companies, airlines, travel and tourism agencies, banks, mining companies, and many others, have business interests at stake in helping to combat destructive illegal trafficking activity and in ensuring that they are not unwittingly assisting such trafficking. Similarly, auction houses, jewelers, and antique dealers have provided such goods to their customers in the past, and many continue to sell legal (and illegal) elephant, rhinoceros, and other wildlife products. Working with these companies to ensure compliance with the new ban on ivory sales, and any future bans on wildlife products, will be critical to the bans' success. These companies will also be crucial in helping to drive down domestic demand for trafficked goods, as they are trend-setters and market-makers in many of these products.

As discussed in more detail below, we recommend that the Advisory Council work with the Task Force to enlist these businesses in anti-trafficking activities. The Advisory Council should facilitate meetings between company executives and high-level government officials to discuss how best to attack the issue. Growing out of such meetings, the Advisory Council should work with leading companies and encourage them to develop voluntary codes of conduct to ensure that they are not assisting in illegal trafficking, and to alert customers, suppliers and others in the value chain to do the same. Companies should use their voices in the marketplace to draw attention to the wildlife trafficking crisis and encourage others to join in their efforts to stop the scourge of wildlife trafficking.

In other contexts, we have seen that well-positioned companies have the potential to have a dramatic effect on demand for particular products. During the blood diamond crisis in the late 90s and early 2000s, the diamond industry worked extensively with the U.N. and governments from diamond-producing countries. Diamonds harvested from certain African countries were being used to finance violent groups of rebels or warlords. A coalition of affected parties came together to address the issue head on to ensure that money from the diamond trade was not being used to finance bloody conflicts. This broad partnership became a coalition of diamond-producing companies and affected governments promising compliance with the so-called “Kimberly Process.”¹²⁵ The Process now requires diamond producers and the countries from and to which they ship diamonds to work together to certify that diamonds being sold are not used to finance conflicts. As a result of these efforts, it has become an industry standard for diamond sellers to ensure that their diamonds are conflict-free. Companies such as Cartier and Tiffany & Co. remain active supporters of anti-blood-diamond efforts, recently joining a boycott of certain Zimbabwean diamonds.¹²⁶

In the case of the blood diamond situation, jewelers and their customers participated in a give-and-take process that created new expectations for companies selling diamonds. Consumers who were concerned about whether their purchases might be fueling conflicts pushed the companies to address the issue. At the same time, some jewelers recognized that by

¹²³ See <http://pages.ebay.com/help/policies/wildlife.html>.

¹²⁴ National Strategy (February, 2014), 9, 11.

¹²⁵ “About”, The Kimberly Process, <http://www.kimberleyprocess.com/en/about>

¹²⁶ “Exposing the Blood Diamond Trade”, Human Rights Watch, <http://www.hrw.org/news/2010/05/21/exposing-blood-diamond-trade>, accessed March 4, 2015.

providing leadership on the issue, they might better cement their reputation for honesty and integrity with customers.

As general awareness of the devastating impact that wildlife trafficking is having on iconic species like elephants and rhino increases, a similar dynamic could arise with regard to sales of ivory and rhino horn. Although the President's recent action to close loopholes and strengthen the ban on selling ivory in the United States¹²⁷ should tighten up the U.S. market, trading is still occurring over the internet and in some retail establishments.¹²⁸ And while such bans have worked in the past,¹²⁹ many people are concerned that some illegal trafficking will still be occurring.¹³⁰ As a result, it behooves the Advisory Council to work with all companies that have a connection to wildlife trafficking, including those that are in a position to be demand-drivers or trend-setters in the luxury wildlife product trade, set a tone of compliance with the ban and, as a general matter, discourage ownership of ivory and other illegally-traded wildlife parts.

These points prompt the following recommendation:

The Advisory Council should facilitate partnerships between private companies and the government to combat wildlife trafficking, including through the development of voluntary codes of conduct or guidelines to assist in combatting wildlife trafficking.

We recommend that the Advisory Council invite leaders from key affected industries to meet with Task Force officials to stress with them the importance of forging a public/private partnership to combat wildlife trafficking, and to lay the groundwork for the potential development of voluntary codes of conduct or guidelines for their industries. Opening up a dialogue can help pinpoint areas of mutual government/business cooperation that may be relevant to different industries (e.g., air cargo or port inspection issues, etc.).¹³¹ In that regard, we recommend that the Advisory Council help match government experts with the relevant business experts to identify weak points in enforcing illegal wildlife trafficking requirements and developing industry responses and/or codes of conduct to respond to those weak points.

Companies operating as antique dealers, jewelers, and other distributors also should engage in this dialogue insofar as they can affect trade in wildlife products. Helping ivory retailers to understand the new ban, and develop voluntary codes of conduct, will help ensure

¹²⁷ White House, Office of the Press Secretary, "Fact Sheet: National Strategy for Combating Wildlife Trafficking & Commercial Ban on Trade in Elephant Ivory" (February 11, 2014), <http://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combating-wildlife-trafficking-commercial-b>.

¹²⁸ For example, an undercover agent recently uncovered a on-ton stock of illegal ivory in a store in Midtown Manhattan.

Melissa Mahony, "Elephant in the room no more: Obama bans ivory sales", *Salon*, February 17, 2014, accessed March 1, 2014,

http://www.salon.com/2014/02/17/elephant_in_the_room_no_more_obama_bans_ivory_sales_partner/.

¹²⁹ "U.S. Ivory Market Collapses After Import Ban", *The New York Times*, June 5, 1990, accessed March 3, 2014, <http://www.nytimes.com/1990/06/05/science/us-ivory-market-collapses-after-import-ban.html>.

¹³⁰ Doug Bandow, "Obama Administration Treats Antique Collectors and Dealers as Criminals: New Ivory Rules Put Elephants At Increased Risk", *Forbes*, February 17, 2014, accessed March 3, 2014, <http://www.forbes.com/sites/dougbandow/2014/02/17/obama-administration-treats-antique-collectors-and-dealers-as-criminals-new-ivory-rules-put-elephants-at-increased-risk/>.

¹³¹ Denis D. Gray, "Biggest Asian Wildlife Traffickers are Untouchable", *Associated Press*, August 15, 2012, accessed March 6, 2014. <http://bigstory.ap.org/article/untouchables-asian-wildlife-traffickers>.

compliance with government requirements and generate consumer confidence in the integrity of their businesses. Just as diamond companies did during the blood diamond crisis, if the trendsetters in the wildlife product market band together to do what they can to make ivory unfashionable, they can help spread the word and tangibly reduce demand.

B. Helping to Coordinate the Government’s Anti-Trafficking Efforts With NGO and other Privately-Financed Initiatives

NGOs, private individuals and foundations are extremely important players in the fight to stop illegal poaching and wildlife trafficking. Organizations such as the Wildlife Conservation Society and the World Wildlife Fund, in addition to many other conservation organizations, have established roles and a wealth of knowledge, experience, and expertise in the field. The Wildlife Conservation Society is at work on a project called 96 Elephants.¹³² This program aims to spread awareness of the slaughter of elephants for the ivory trade. Wild Aid has started a similar awareness campaign, enlisting the help of several high-visibility celebrities to inform people all around the world of the issue, but especially in countries where demand for such products is high.¹³³ The Frankfurt Zoological Society is heavily invested in its Serengeti Conservation Programme.¹³⁴ It has partnered with the Tanzanian Government, and has taken over some functions often left up to governments in an effort to better preserve its protected areas. The FZS has even repatriated a handful of black rhinos from the Frankfurt Zoo back into their natural habitat in the Serengeti.

There are already a number of public-private partnerships in place for conservation efforts. Most notably, the Clinton Global Initiative has created a program that brings many of these organizations together with the U.S. and foreign governments to combat elephant poaching and the illegal trade in ivory. With its Partnership to Save Africa’s Elephants,¹³⁵ CGI convened more than a dozen key NGOs and obtained a joint commitment to combat elephant poaching and related ivory trafficking. In addition to the NGOs mentioned above, CGI has brought in the African Wildlife Foundation, the International Fund for Animal Welfare, and Conservation International, among others. These organizations’ commitment to the CGI initiative will help them continue their important work on a more unified basis, with a focus on the CGI’s mantra to “stop the killing,” “stop the trafficking,” and “stop the demand.”¹³⁶

Although some public/private partnerships, such as CGI’s, are underway, the President’s Executive Order, and his – and the National Strategy’s – explicit request that the Task Force and Advisory Council facilitate additional public/private partnerships, should prompt more active U.S. government involvement in helping to coordinate NGO and other privately-funded anti-trafficking initiatives with government-led efforts. There are a number of ways in which the Task Force and Advisory Council can facilitate public/private partnerships with the NGO community and private funders. Our recommendations include:

¹³² Wildlife Conservation Society, 96Elephants, <http://www.96elephants.org/>.

¹³³ Wild Aid, <http://www.wildaid.org/>.

¹³⁴ Frankfurt Zoological Society, “Serengeti Conservation Programme,” <http://www.zgf.de/?id=65&projectId=74&language=en>

¹³⁵ Clinton Foundation, Clinton Global Initiative, Partnership to Save Africa’s Elephants, <http://www.clintonfoundation.org/clinton-global-initiative/featured-commitments/partnership-save-africas-elephants>

¹³⁶ *Id.*

The Administration should provide more transparency regarding the government's anti-trafficking priorities and granting opportunities. As part of this effort, we recommend that the Administration set up a cross-agency web site to identify granting opportunities and facilitate coordination with NGOs and private funders.

Many NGOs and private funders do not have a clear sense of federal agency funding opportunities and priorities. Federal granting in this area is confusing. Grants can come from a number of different agencies, many of whom support conservation efforts. USAID, the Fish and Wildlife Service, the State Department, and others all contribute to conservation efforts. It can be difficult for organizations to find out where they can obtain funding. The grant system is very important to conservation efforts, and will be an integral part of the effort to fight wildlife trafficking, and bringing more transparency to the process can only serve to help the Task Force's efforts.

With this in mind, in order to implement the National Strategy, we recommend that the Task Force create an internet database of grants from various agencies that are available for use for wildlife trafficking projects. Each agency that has a role in combating wildlife trafficking would list its grants on this website, in addition to any other relevant data.

In a similar vein, existing grants that have been spent with the intention of fighting poaching and wildlife trafficking will also be listed on the site, allowing people to see what programs are already in place in order to avoid duplication or competition. With this system in place, when NGOs come together with the goal of combating wildlife trafficking, they will have a one-stop-shop where they can go for information about grants and how to apply for them. This will streamline the grant process, provide more transparency in the process, and make it easier for NGOs to get the funding they need.

The Task Force's website also could host additional information about U.S. anti-trafficking activities, including information about the prosecution of known wildlife traffickers, or new private partners in the efforts to combat it. It could also post relevant information with regard to new partners joining the fight, examples of voluntary guidelines created by partner companies and NGOs, and any changes in the law or other updates.

The second issue that also can be addressed by a more transparent granting process and web-based information is the tendency of some NGOs to duplicate efforts in a particular area. This creates confusion, territoriality, and inefficiency. With an issue as sensitive as wildlife trafficking, every dollar spent, and every minute of time worked is precious, and overlap and competition hurt the overall effort. To combat the issue of overlap, the U.S. could design its grants (all compiled and listed on the website mentioned above) to encourage collaboration among various NGOs and other organizations that have an active role in fighting wildlife trafficking. For example, a particular grant could provide access to a second tier of grant funding only upon a showing that there is ongoing collaboration with other NGOs.

Facilitated by the Advisory Council, Administration representatives should identify areas in which additional privately funded assistance could materially advance anti-trafficking activities. In addition, the Administration should facilitate country-level meetings among NGOs and private funders with relevant US embassy personnel and host country officials to discuss and coordinate anti-trafficking efforts.

By definition, governments must take the lead in implementing anti-trafficking efforts at home and abroad insofar as legal strictures and law enforcement are central to anti-trafficking efforts. Effective governmental involvement is needed at every step of the process, including in range nations, where poaching activities are being conducted by well-armed and well-organized teams¹³⁷; in connection with the export, transshipment and import of illegal wildlife parts from range to consumer nations; and in consumer countries, where governmental cooperation is needed to upgrade domestic laws and related enforcement efforts regarding the sale of illegally-obtained wildlife parts. In certain parts of this chain, pressure from the U.S. government and the international community of nations is needed to force range, transshipment and/or consumer nations to mount serious anti-trafficking efforts.

There is significant interest by NGOs and philanthropists in helping the U.S. government and other affected nations in combating wildlife trafficking. Without good and close cooperation with the appropriate governmental bodies, however, well-meaning financial contributions by citizens, philanthropists and NGOs may not be coordinated in an optimal way with pressing needs that have been identified by the governmental authorities who are deeply involved in developing effective anti-trafficking strategies.

We recommend that the Advisory Council and the Task Force organize an effort that would have key leaders in the governmental effort at State, Justice and Interior meeting with NGO and private funders and identifying anti-trafficking activities which, in their view, could be materially advanced through additional privately-funded assistance. These discussions also could identify potential contributions that, in the view of governmental experts -- including U.S. embassy personnel who are working closely with in-country resources -- would not be cost-effective due to overlap with activities that others have underway, in-country corruption concerns, or the like.

Candid interchanges between U.S. governmental authorities, NGOs and private funders could generate several benefits, over and above the primary benefit of helping to direct precious private sector dollars into anti-poaching initiatives that will be effective, and that dovetail with U.S. government-supported efforts. In particular, these discussions could provide the type of give-and-take that will likely improve the effectiveness of both government and privately-funded anti-poaching activities. They also should help focus continued attention on the serious work that needs to be undertaken to combat the crisis, and they may lead to additional public/private initiatives that draw more public attention to the crisis. The Clinton Global Initiative which, as noted above, already has convened a number of under its Partnership to Save Africa's Elephants potentially could assist in this effort, particularly as it relates to elephants and ivory.

C. Supporting Community-Based Wildlife Protection Models

The U.S. government traditionally has provided funding to support the development and sustainability of various community-based wildlife protection models. Community-based wildlife protection models seek to provide incentives for wildlife conservation to local

¹³⁷ Matthew Sully, "Inside the Global Industry That's Slaughtering Africa's Elephants," *The Atlantic*, June 6, 2013, accessed March 2, 2014, <http://www.theatlantic.com/international/archive/2013/06/inside-the-global-industry-thats-slaughtering-africas-elephants/276582/>.

communities by increasing access to economic benefits from wildlife resources. Economic benefits are typically derived from wildlife-linked enterprises, such as tourism or hunting.

Supporting effective community-based wildlife protection models is an important tool for combatting wildlife trafficking. When communities do not value their wildlife, poaching activity is more likely to be condoned, or even encouraged. Conversely, when communities have an incentive to protect their wildlife, they can make a major contribution to sustainable wildlife protection.

Community-based support for wildlife protection is particularly important because traditional protected areas, such as national parks, do not always provide sufficiently large ecosystems for support wildlife. For instance, African elephants can have broad home ranges and are naturally migratory. In many of the range countries where most of the heavy poaching of elephants occurs, elephants are not bounded by fences and move throughout a matrix of protected and non-protected areas, many of which are home to rural communities. As a result, elephants are dependent on human-dominated lands and in some places, a full 80 percent of their range lies outside protected areas¹³⁸. Therefore, garnering the support of rural communities that live most closely with wildlife is critical in the long-term conservation of wildlife.

In addition, many poachers are recruited from poor, local communities. Poaching of high-value species can be an attractive conservation of wildlife. s provide sufficiently large ecosystems for support wildlife. For instance, Aviation programs can help support poor communities, the incentives potentially can be reversed. Under such circumstances, poachers would be seen as a threat to their communities, and community leaders would join in efforts to protect their wildlife resources.

The discussion that follows provides a high-level overview of case histories of some community-based wildlife protection models, followed by an identification of the key criteria for success (or failure) of such initiatives, and leading to the following recommendation:

We recommend that the Administration continue to support community-based conservation efforts as an important tool to attack one of the root causes of wildlife trafficking. Because of the varying levels of success of different community-based wildlife conservation models, we recommend that the Administration undertake an evaluation of the effectiveness of various models that it is supporting and that this review be coordinated, where possible, with the host government; that it consult with experienced, in-country organizations involved with the administration of community-based conservation programs; and that it take steps to increase support for successful models, and remove support from failing efforts.

3. Case histories

Since the 1980s, community-based conservation models have spread rapidly across sub-Saharan Africa. There are a variety of forms of practices reflecting historical and socioeconomic complexities. The relative success of community-based conservation efforts have varied widely.

¹³⁸ Hoare, R.E. *Determinants of human-elephant conflict in a land-use mosaic*, 36 JOURNAL OF APPLIED ECOLOGY, 689-700 (1999).

Outcomes tend to be locally-specific and outright success of this model of conservation is often illusory. This section introduces brief histories of some community-based conservation models for the purpose of identifying key criteria for success. In addition to acknowledging successful cases, unsuccessful cases are analyzed in brief to learn from their failure and challenges.

- **Community Conservancies in Namibia**

Namibia's community-based conservation efforts have taken various forms in sub-Saharan Africa. The legal framework was established by the Nature Conservation Amendment Act of 1996. To date, 79 community conservancies have been registered.¹³⁹ They cover 52.2 percent of all communal land in Namibia with 172,000 residents and manage 19.2 percent of the country.¹⁴⁰ External institutions including USAID and the World Wildlife Fund (WWF) have helped establish community conservancies in Namibia.

In a community conservancy, communal area residents are granted the rights to wildlife use, hunting activities and the management of related tourism. Importantly, the residents are allowed to retain 100 percent of the revenue earned from tourism joint ventures and tourist hunting concessions. In addition, the program takes the damage caused by human-wildlife conflict into consideration. Under the "Human Wildlife Self Reliance Scheme," conservancy members who have suffered losses by wildlife can receive compensation from the conservancy.¹⁴¹

The governance structure of a community conservancy is based on a bottom-up, participatory approach. Community conservancies are administered by locally elected representatives and choices about how to use local wildlife are made entirely at the local level. All adult communal area residents may become members of the conservancy and attend annual general meetings. Since high skills are necessary to manage conservancies appropriately, broad support is provided by the Namibian Association of CBNRM Support Organizations (NACSO).¹⁴²

Community conservancies are, for the most part, functioning successfully. Significant wildlife recoveries have been observed and numbers of elephants and black rhinos have tripled since 1970s.¹⁴³ According to WWF, the vigilance of conservancy members and other efforts have made rhino poaching almost non-existent in Namibia. The economic benefits generated in the community conservancies provide the backbone for the success. Community conservancies generated over 5 million US dollars for local communities and facilitated 6,477 jobs in 2012, while covering its operational cost from its own income.¹⁴⁴

¹³⁹ The Namibian Association of CBNRM Support Organizations (NACSO), http://www.nacso.org.na/SOC_profiles/conservancylist.php (last visited March. 2, 2014)

¹⁴⁰ The Namibian Association of CBNRM Support Organizations, *Namibia's Communal Conservancies: a Review of Progress in 2012*, available at http://www.nacso.org.na/SOC_2012/SOC_2012.pdf.

¹⁴¹ *Id.*

¹⁴² <http://www.nacso.org.na/index.php>.

¹⁴³ The Namibian Association of CBNRM Support Organizations, *Namibia's Communal Conservancies: a Review of Progress in 2012*, available at http://www.nacso.org.na/SOC_2012/SOC_2012.pdf.

¹⁴⁴ *Id.*

- **Northern Rangelands Trust in Kenya**

In Kenya, where hunting was banned in 1977,¹⁴⁵ community-based conservation approaches do not involve the granting of commercial hunting rights like other range countries. However, there are some successful initiatives led by local communities. The most notable is the Northern Rangelands Trust (NRT), a registered trust comprised of community, institutional and private-sector members. NRT is viewed as a successful model of institutions supporting community conservancies.¹⁴⁶ It was established in 2004 through a partnership between local communities and a privately-owned game ranch. NRT has since grown and is now working with 26 communities, which manage areas greater than 25,000 km². According to NRT's website, another 23 communities have expressed a desire to establish conservancies and join NRT.¹⁴⁷

To become a member of NRT, every conservancy is required to enter into a memorandum of understanding with NRT. Conservancies are obliged to operate on the basis of a zoned management system, which prohibits domestic livestock grazing in core conservation areas, and which requires conservancies to undergo independent financial audits. NRT, in turn, supports member conservancies in several ways, including raising funds, advising on how to manage conservancies, providing a wide range of training (including ranger training), assigning a specialist anti-poaching unit to conservancies and so on. NRT also encourages the good conservation performance of member conservancies through its "Linking Livestock Markets to Wildlife Conservation" program, under which NRT monitors the performance of community-based conservation and helps to market the livestock produced from the best performing conservancies.¹⁴⁸

NRT relies on a community-based governance structure. NRT's highest governing body is the Council of Elders, which guides NRT policy and draws up the bylaws.¹⁴⁹ The chairs of the conservancies make up the majority of the Council of Elders, joined by institutional members representing county councils, local wildlife forums, the Kenya Wildlife Service and the private sectors.

NRT has succeeded not only in improving habitat conditions but also in reducing the level of elephant poaching in member conservancies by using ranger forces and social pressures.¹⁵⁰ Its monitoring system is also used as part of CITES Monitoring of Illegal Killing of Elephants program.

¹⁴⁵ Nelson, F., & Agrawal, A., *Patronage or participation? Community-based Natural Resource Management Reform in Sub-Saharan Africa*, 39(4) DEVELOPMENT AND CHANGE, 557-585 (2008).

¹⁴⁶ Louise Glew, Malcolm D. Hudson & Patrick E. Osborne, *Evaluating the effectiveness of community-based conservation in northern Kenya: A Report to The Nature Conservancy*, (2010) available at <http://www.nature.org/science-in-action/science-features/7-evaluation-kenya-pdf.pdf>.

¹⁴⁷ <http://www.nrt-kenya.org/the-future/>

¹⁴⁸ <http://www.nrt-kenya.org/livelihood/>

¹⁴⁹ <http://www.nrt-kenya.org/governance/>

¹⁵⁰ NRT provides a story as an example of influential social pressure in which a local leader called all his chiefs together and provided them with the names of local poachers. Some of the chiefs actually called in the poachers; others were given a severe warning about their future behavior. Available at <http://www.nrt-kenya.org/wildlife/>.

The NRT program, however, remains financially vulnerable.¹⁵¹ At present, it costs around \$1.5 million US dollars a year to run the conservancies, about 80 percent of which comes from international donors, including USAID and Fauna and Flora International.¹⁵² For the continuing success of this model, the derivation of revenues from conservation-related activity must increase. Research into sustainable means for increasing domestic revenues from this model will provide a stronger case for conservation in the long term.

- **Wildlife Management Areas in Tanzania**

There are three key types of community-based conservation programs in Tanzania. Among these, Wildlife Management Areas (WMAs), established by the Wildlife Act of 1998, is the program with the highest involvement of local communities.¹⁵³ To date, 19 WMAs have been established and 19 other WMAs are currently being formed. These WMAs will bring the total area under community conservation to over 10 percent of Tanzania.¹⁵⁴

To establish a WMA, villages agree to contribute sections of their land and form a Community Based Organization (CBO). The CBO then applies to the government for authorization to establish a WMA, where land use is restricted to ensure that wildlife habitats are sustained. A CBO which is granted “Authorized Association” status has user rights of the wildlife in the WMA (that is, the community may either consume a limited number of animals itself or lease its rights to a commercial hunting operator) and the right to conduct tourism-related businesses.

WMAs have produced some positive results. For instance, some WMA community members have been trained and employed as game scouts to patrol wildlife areas. In addition, some communities are earning income from tourism activities (\$2,000 - \$7,000 US dollars or more per village in 2009).

WMAs, however, are facing a number of challenges. First, WMAs have not been successful in motivating and mobilizing local residents.¹⁵⁵ One of the problems is that the government has not been willing to devolve powers to local communities and, as a result, communities are not as involved in the decision-making process as they potentially could be. In addition, the benefit sharing mechanism is not transparent and it favors the government over local communities with, by way of example, the government keeping 20 percent of photographic tourism revenues and 75 percent of hunting tourism revenues.¹⁵⁶ This engenders mistrust and

¹⁵¹ <http://www.nrt-kenya.org/tourism/>

¹⁵² <http://www.nrt-kenya.org/the-future/>

¹⁵³ Tanzania National Resource Forum, *Community-Based Natural Resource Management Stocktaking Exercise in Tanzania*, (2013) available at http://awsassets.panda.org/downloads/cbnrm_str_tnrf2013.pdf.

¹⁵⁴ World Wildlife Fund, *Wildlife Management Areas Spread the Wealth in Tanzania* (2013), available at <http://worldwildlife.org/stories/wildlife-management-areas-spread-the-wealth-in-tanzania>

¹⁵⁵ Songorwa, A. N., *Community-based Wildlife Management (CWM) in Tanzania: Are the Communities Interested?*, 27(12) WORLD DEVELOPMENT, 2061-2079. (1999).

¹⁵⁶ Eliezeri Sungusia, *Community-Based Conservation in Tanzania: Getting the Incentive Right*, 29 TROPICAL RESOURCES, 54-58 (2010).

frustration.¹⁵⁷ In addition, WMAs have not addressed crop damage by elephants. Although the government is supposed to provide victims with money to compensate for damage caused by wildlife, many victims have not received any compensation to due bureaucratic delays or incompetence.¹⁵⁸

- **CAMPFIRE in Zimbabwe**

Zimbabwe's Communal Areas Management Program for Indigenous Resources (CAMPFIRE), which began in mid-1980s, was touted by some as the flagship model of a community-based natural resource management program. Under CAMPFIRE, however, "Rural District Councils" – and not the local communities -- have the right to benefit directly from the use of wildlife resources.¹⁵⁹ The Councils have been unwilling to devolve their authority to communities.¹⁶⁰ Also, although the Councils are supposed to pass a fixed percentage of the wildlife revenues earned to local communities, they have failed to do so, retaining a large proportion of revenues for themselves.

4. Key Criteria for Success

Based on experience, it appears that the key criteria for successful community-based conservation models focus on four factors: (1) community participation; (2) economic benefit; (3) damage compensation; and (4) transparency and accountability.

- **Community Participation; Economic Benefit**

Successful cases suggest that local communities willingly cooperate with conservation initiatives when they have the opportunity to participate in the decision-making process. Although it is important to recognize that each location is steeped in its own history of power relationships and decision-making institutions, the devolution of powers to local communities is key.

In Namibia, a peculiar historical background helped the implementation of the bottom-up, community-participatory approach in conservancies. When a community conservancy scheme was created, the authority over wildlife in white-owned lands had already been transferred to private landowners, and wildlife populations on communal lands were relatively small due to years of over-exploitation and drought. These factors reduced the incentives of the government authorities to resist devolution of wildlife management powers to local communities.¹⁶¹ In addition, it should be noted that Namibia is lightly populated, as a general

¹⁵⁷ International Resources Group, Ltd., *Community Based Conservation Experience in Tanzania: An Assessment of Lessons Learned*, available at http://start.org/download/biodiversity10/Community%20conservation%20Tanzania_USAID.pdf.

¹⁵⁸ *Id.*

¹⁵⁹ Nelson, F., & Agrawal, A., *Patronage or participation? Community-based Natural Resource Management Reform in Sub-Saharan Africa*, 39(4) DEVELOPMENT AND CHANGE, 557-585 (2008)

¹⁶⁰ International Institute for Environment and Development (IIED), *Whose Eden? An Overview of Community Approaches to Wildlife Management*, IIED, London (1994), available at <http://pubs.iied.org/pdfs/8260IIED.pdf>

¹⁶¹ *Id.*

matter, making community-based participation both easier and more rewarding for local populations.

Although Namibia should be noted that Namibia is lightly populated, as of its history of communal land ownership and sparse populations, the success of the NRT in Kenya indicates that community-based conservation models also can flourish in different contexts – so long as community participation and devolution of authority is honored.

To successfully motivate local communities to refrain from illegal exploitation, it is important that economic benefits from wildlife protection exceed the cost of living in close proximity to wildlife. The attitudes of rural populations affected by conservation activities are mostly concerned with enhancing their livelihoods and getting access to governmental services such as health care, infrastructure, and the like.

- **Damage Compensation; Transparency and Accountability**

Cases in Namibia and Tanzania suggest that building of robust, equitable financial compensation schemes for damage caused by human-wildlife related conflicts also serve to garner community support. In addition, one of the predominant characteristics of unsuccessful cases is non-transparency and lack of accountability of decision-making process and benefit sharing mechanisms. They become sources of rampant corruption and invite local communities' distrust, apathy and sometimes hostility towards conservation activities. Therefore, maintaining transparency and accountability at all levels are crucial.

D. Establishing an Africa-Based Information Hub

In the battle against wildlife trafficking, one of the silent enemies is misinformation and the lack of information. While there is disturbing anecdotal information about elephant killings, for example, reliable population numbers have been hard to come by and, as a result, the impact of the killings on regional populations of elephants is little better than guesswork. Where there have been population counts, many have been conducted or overseen by governmental authorities who may have an interest in understating the extent of the killings.

In addition to missing or unreliable population data, there is limited access to other types of data that are relevant to anti-trafficking efforts. For example, information about the numbers and intensity of poaching incidents in various areas is not generally available, resulting in missed opportunities to alert areas that are under special pressure and to optimize the allocation of response resources. In-country prosecutions and sentences for wildlife trafficking also are not readily available, even though such information could provide revealing insights into the relative vigor of different countries' enforcement efforts. Likewise, information about seizures of ivory, rhino horn and other illegal wildlife parts, and demand-related information in consuming nations, is not readily available.

Significant efforts have been made in recent years to collect the type of information that can help to combat wildlife trafficking. Of special note is the effort to pool resources to improve the monitoring of live elephant populations; the reporting of illegal elephant killings to MIKE (Monitoring the Illegal Killing of Elephants; the CITES-managed poaching monitoring system);

and the reporting of ivory trafficking cases to ETIS (the Elephant Trade Information System, managed by TRAFFIC on behalf of the Parties to CITES). Recently, the European Union has pledged funds to support a “MIKES” project (Minimizing the Illegal Killing of Elephants and other Endangered Species), which would provide support for the existing MIKE and ETIS programs, while extending the monitoring program to other endangered species such as rhinos and great apes.

Information garnered through the MIKE program on elephant killings has been particularly important, as has information gathered on illegal trading under ETIS. Nonetheless, the absence of reliable baseline population numbers, and continued difficulty in obtaining the full cooperation of some governments in terms of population counts and poaching-related information, prompts us to ***recommend that the international community redouble its efforts to obtain and disseminate pertinent information about the wildlife trafficking crisis by establishing an Africa-based information hub that will collect, oversee and disseminate key information about wildlife populations and wildlife trafficking. We suggest that a leading African universit[ies] and/or data center[s] be selected to host the proposed information hub, and that the operations of the hub be overseen by a panel of respected African leaders and third party experts who will ensure that appropriate protocols are utilized when collecting information, without interference by governmental authorities.***

Establishing such an information hub, and making credible data pertinent to wildlife trafficking broadly available, in an accessible format, will help draw attention to the seriousness of the crisis, and identify areas in which the situation is particularly acute. Likewise, information about prosecutions and sentences would reveal weak points in enforcement, and seizure-related information could help direct attention to trafficking transit modes. By housing the center in Africa, and involving respected leaders and experts in overseeing its operations, pressure can be brought against governments that in the past have been reluctant to allow third parties to undertake wildlife counts and to collect other wildlife trafficking-related information.

Additional considerations pertinent to the formation of an Africa-based information hub might include:

- The important base of information provided by the MIKE and ETIS programs (and the soon-to-be-expanded “MIKES” program) could provide a core part of the proposed Africa-based information hub. These data will be more useful if they are paired with strong data on underlying populations – the current weak point in the information collection system.
- Information maintained by the hub should be made available for public consumption through various means, including through a webpage that has interactive means of accessing information through GIS-based maps and similar tools.
- Placing the information hub in a university setting is attractive because the university will have academic departments that already are dedicated to the study of issues of wildlife, including conservation, environmental impact, and animal welfare. It may be efficacious for more than one university to sponsor the information hub so that relevant research and expertise can be integrated easily into the effort. A combination of Africa-based universities and globally respected universities in other nations might be considered.

- Whether it is housed at a university or not, the center will need to establish a governing structure of respected African leaders and third party experts who will establish appropriate protocols for gathering information, and who will determine the adequacy and veracity of information that is provided by governments, NGOs and other institutions for potential inclusion in the hub.
- Through the layering of GIS-based mapping information, the information hub should be able to pull in information from various sources, including research from a variety of institutions that are undertaking new data gathering efforts. One of the responsibilities of the information hub's governing body will be to audit these sources for accuracy of information and to create a rating system for the veracity of information coming from different sources. This will help others seeking information to understand the best places to direct their future research.

VI. Addressing Demand is Essential to an Effective Anti-Trafficking Strategy

Efforts to stop wildlife trafficking typically focus on the front end of trafficking, with the killing of the animals. Many assume that if poachers are stopped at the outset with firepower and effective enforcement, middlemen will have no ivory to move from range to consumer countries, and consumers will have no ivory to buy. While a 100% effective enforcement strategy would yield this result, the reality is that wildlife trafficking causation moves in the *other* direction: consumers want to buy ivory, and *therefore* middlemen seek out ivory supply from poachers who are motivated to provide it.

History suggests that as long as consumers are interesting in buying high-priced ivory, traffickers and poachers will continue trying to find ways to deliver the goods, even in the face of escalating anti-poaching efforts. The economic incentives are too strong not to, particularly at the local level, where impoverished communities may be able to produce a nearly-inexhaustible supply of potential poachers. The National Strategy Document recognizes this reality, noting that “[c]riminals will continue to kill wildlife and traffic in contraband as long as the potential profits remain so high.” Indeed, the document acknowledges that “increasing antipoaching and antitrafficking enforcement efforts will have only limited effect unless we work simultaneously to address the persistent market demand that drives this trade.”

As a result, while an effective counter-trafficking policy must invest in efforts to stop the killing on the front end, we believe that it also should devote at least as much attention and dollars – if not more -- to the demand side of the equation. The National Strategy Document reflects this emphasis by identifying the reduction of demand for illegally traded wildlife as one of its three strategic priorities, on par with strengthening enforcement and expanding global commitment.

Many factors influence consumer attitudes and behaviors on the demand side. While policy analysts typically focus on factors such as legal requirements, enforcement and price structures as primary influencers consumer demand, psychological drivers behind consumer behavior may be determinative – particularly when consumers are motivated by cultural norms and values, and personal beliefs, and where the high price of a luxury item, such as ivory, can counter-intuitively make its purchase *more* attractive.

The following sections discuss how media and communications efforts can leverage these powerful psychological drivers to reduce consumer demand. The National Strategy Document encourages this, advocating for use of public information campaigns to discourage the sale of illegally traded wildlife in key markets.

A. Media Campaigns Can Impact Consumers’ Attitudes & Behavior

Media campaigns have succeeded in reducing demand for wildlife products and can work again to stem the sale of ivory. One of the most successful, on-going initiatives in recent years involves the effort to reduce demand for shark fin soup in China. Lack of knowledge was a key problem: a 2005 survey found that 80% of Chinese consumers did not understand that the soup (called “fish wing” soup in Chinese) was made with shark fins, let alone understand the brutal

practice of “finning” the sharks and throwing them overboard to die.¹⁶² As discussed in more detail below, communications campaigns orchestrated by WildAid and Shark Savers succeeded in reducing consumption of shark fin soup by 50-70% in only two years.¹⁶³ They did this by using international celebrities to help inform Chinese consumers about the realities of the practice and encourage a culture of change.¹⁶⁴

The shark fin soup situation is highly analogous to the crisis that we currently face with ivory consumption in China. The success of the campaigns directed to reduce demand for shark fin soup in China serves as a positive reminder that media efforts can and do make a positive difference in this market.

B. Focusing on a Key Market: China

Ivory is purchased in a wide range of countries across the globe, from China to America, Belgium to Malaysia.¹⁶⁵ Despite this widespread consumption, there is no question that the Chinese demand for ivory is the primary driver in the marketplace.

A 2012 analysis by Elephant Trade Information System (an information system developed to track illegal trade in ivory under CITES) highlights that 83% of China’s ivory trade since 2006 has occurred in the past three years, signifying that China is becoming more active in the ivory market and is “the single most important contemporary player” today.¹⁶⁶ According to a survey by National Geographic and Ifop, China’s demand for ivory is at an all-time high, with 84% of Chinese consumers planning to buy ivory products in the future.¹⁶⁷ Pair this with the fact that China is home to over 1.36 billion people,¹⁶⁸ with an urban population of 700 million (and growing),¹⁶⁹ and it becomes clear that focusing on efforts to change the buying behavior of Chinese consumers may provide the largest “bang for the (demand-side) buck.”

C. The First Step is Understanding *Who* is Buying Ivory in China & *Why*

To develop a successful communications strategy that addresses the psychological drivers and norms behind ivory consumption, we must first understand *who* is buying ivory in China (or may in the future), *why* they are doing so, and what barriers impede our goals to change

¹⁶² The Washington Post: In China, victory for wildlife conservation (Oct, 2013).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Milliken T, Burn RW, Underwood FM, Sangalakula L (2012) The Elephant Trade Information System (ETIS) and the Illicit Trade in Ivory: a report to the 16th meeting of the Conference of the Parties. Doc. CoP16 53.2.2, CITES Secretariat, Geneva, Switzerland (pg. 13-17).

¹⁶⁶ Milliken, *supra* note 4 (pg. 14-15).

¹⁶⁷ National Geographic: The Ivory Trade: Thinking Like a Businessman to Stop the Business (Feb, 2013).

¹⁶⁸ World Population Statistics: China Population (2013).

¹⁶⁹ It is difficult to accurately measure the amount of ivory purchased in various countries because so much of the trade is illegal or, if legal, not recorded in a way that is accessible to those measuring it. The best measure we currently have to determine the relative size of markets for ivory is the amount of ivory seized in each country. From such information, we quickly see that a far greater amount of ivory has been seized in China between 1989 and 2011 than in any other country, with over 90,000 pounds seized during that period. Thailand comes in at a distant second, with 47,100 pounds seized. *See Ivory Seizure Data: Tom Milliken, ETIS TRAFFIC.*

consumers' attitudes and behavior. This will allow us to model the messaging to the appropriate audience and to the most persuasive psychological and cultural drivers.¹⁷⁰

- ***Who is Buying Ivory in China?***

China is a diverse country with a wide variety of consumers. That said, key trends in consumer behavior can help us identify the group of people that will be most receptive to anti-trafficking messaging and most able to influence others. For the reasons discussed below, a demand-side media campaign may be most effectively focused on reaching China's emerging middle class and newly wealthy consumers.

Ivory has a long cultural history in China extending back to the dynastic period when artisans produced intricate sculptures that were only available to the imperial court and aristocracy.¹⁷¹ In recent generations, ivory consumption has extended beyond the aristocracy to members of the government and wealthy businessmen, but consumption still was relegated primarily to an elite group of earners who could afford the rarity.

All of that is changing, however, with the exponential growth in recent years of China's middle class due to the country's booming economy. Today, there are more than 300 million Chinese middle class consumers who have access to disposable income for the first time in their lives, a number that is expected to grow significantly in the coming decades.¹⁷² As described in a McKinsey report, "[h]undreds of millions of consumers are still in the early stages of satisfying desires for goods and services that exceed basic needs, which means that the country's market offers the prospect of robust and rising demand for decades to come."¹⁷³

The Chinese middle class is heavily concentrated in large cities and is significantly younger than its counterparts in other countries, with most between twenty and fifty years of age.¹⁷⁴ This group of consumers that can now afford to purchase luxury goods is "becoming more self-indulgent in purchasing activity [and] more individualistic in wants and needs."¹⁷⁵ This younger generation of middle-class consumers is the most westernized to date: instead of clinging to tradition, they are open to trying new things and are highly connected to their peers online.¹⁷⁶ Indeed, they frequently review user comments for products online and have the world's most active social media population.¹⁷⁷

China's growing middle class is an ideal target for anti-ivory campaigns for several reasons. First, the sheer size of the group and its concentrated accessibility in large cities means that mass media forms of communication can reach a large percentage of the target audience. Second, this group is new to the luxury market and is still deciding how to spend its disposable

¹⁷⁰ TRAFFIC: Behaviour Change We Can Believe In (May, 2012) (pg. 2).

¹⁷¹ The Guardian: How China is driving the grim rise in illegal ivory (Jan, 2012).

¹⁷² Forbes: Within A Generation, China Middle Class Four Times Larger Than America's (Sep, 2011).

¹⁷³ McKinsey Report: From Mass to Mainstream (2012) (pg. 8).

¹⁷⁴ CNN: China's Growing Middle Class (Apr, 2012).

¹⁷⁵ McKinsey Report: From Mass to Mainstream (2012) (pg. 6).

¹⁷⁶ McKinsey Insights: Mapping China's Middle Class (June, 2013).

¹⁷⁷ McKinsey Insights: China's Social-Media Boom (May 2012).

income, an ideal stage to step in and guide their future purchasing decisions.¹⁷⁸ Third, the group's openness to new ideas and social connectedness to (and influence on) peers presents a ripe opportunity to present ideas that the consumers themselves can popularize.

- ***Why Are They Buying Ivory?***

There are multiple motivations behind *why* consumers in China buy ivory. That said, we can look to overarching trends to identify the key drivers behind ivory consumption in China. Understanding these social and psychological drivers will in turn help in the development of messaging strategies that directly address these motivations.

As discussed above, ivory started off as a luxury craft available only to the aristocracy and imperial courts. For thousands of years ivory has symbolized social status and prestige, a display of wealth and grandeur that was rare and exclusive.¹⁷⁹ Even though a different group of people now has the resources to purchase ivory, the reasons behind the consumption remain the same: ivory is seen to confer social status in a very socially-conscious culture.¹⁸⁰ Indeed, 87% of consumers surveyed by National Geographic associated purchasing ivory with a feeling of “prestige” and 84% planned to buy ivory goods in the future.¹⁸¹ In a country where “[r]olxes and Louis Vuitton bags are sometimes bought by the dozen,”¹⁸² ivory chopsticks, combs and trinkets are outward signs of a rare success and exclusive status.¹⁸³

Beyond personal ownership, ivory in China is frequently given as a gift during holidays, special occasions and business transactions. The general practice of social “gifting” is deeply embedded in Chinese culture and is viewed as a way of nurturing and maintaining relationships.¹⁸⁴ Indeed, a gift of ivory is said to confer the highest honor upon its recipient, expressing the sentiment that “this relationship is as precious as ivory.”¹⁸⁵ Social gifting is expected to stay strong or even increase in China in the coming years and will continue to be a significant factor behind China's growing luxury market.¹⁸⁶

It is not easy to uproot a cultural tradition, especially when many feel that “[l]ove for ivory is in our blood.”¹⁸⁷ It is not surprising, therefore, that the Chinese government appears to be defensive about the ivory trade (although we hope that will change in the coming months), characterizing carving as a “traditional culture” and supporting its (legal) trade via state-licensed workshops.¹⁸⁸ The National Strategy Document recognizes this, yet still forges ahead, saying that “[w]e will respect cultural and national sensitivities even as we ask communities to reconsider longstanding traditions that might incentivize or contribute to wildlife trafficking.”

¹⁷⁸ Note that, while these consumers have not historically been heavy purchasers of ivory, 87% indicate intent to purchase ivory in the future. See National Geographic: The Ivory Trade: Thinking Like a Businessman to Stop the Business (Feb, 2013).

¹⁷⁹ Time World: Blood Ivory: Hong Kong Fights a Losing Battle Against Smugglers (Oct, 2012).

¹⁸⁰ The Guardian: How China is driving the grim rise in illegal ivory (Jan, 2012).

¹⁸¹ National Geographic: The Ivory Trade: Thinking Like a Businessman to Stop the Business (Feb, 2013).

¹⁸² The New York Times: From Elephants' Mouths, an Illicit Trail to China (Mar, 2013).

¹⁸³ Take Part: China to Destroy Illegal Ivory (Jan, 2014).

¹⁸⁴ McKinsey Report: Luxury without Borders (Dec, 2012) (pg. 18).

¹⁸⁵ The New York Times: From Elephants' Mouths, an Illicit Trail to China (Mar, 2013).

¹⁸⁶ McKinsey Report: Luxury without Borders (Dec, 2012) (pg. 7).

¹⁸⁷ The New York Times: From Elephants' Mouths, an Illicit Trail to China (Mar, 2013).

¹⁸⁸ The Washington Post: In China, victory for wildlife conservation (Oct, 2013).

D. Ignorance & Apathy Are Key Barriers to Changing Consumers' Attitudes & Behavior

In addition to targeting the psychological and social drivers behind consumers' use of ivory, campaign efforts should also seek to combat the key barriers to action.

- **Ignorance**

The word for “ivory” in Chinese (“Xiang Ya”) literally means “elephant tooth.” A 2007 survey conducted by the International Fund for Animal Welfare (“IFAW”) found that 70% of Chinese consumers did not realize that ivory came from dead elephants, thinking instead that ivory simply falls out of live elephants' mouths the same way teeth fall out of human mouths.¹⁸⁹ This misperception is often glossed over; for example, a documentary on Chinese television about the Beijing Ivory Carving Factory's efforts to revive the craft never addressed the issue of poaching and never explained that “elephant teeth...do not just fall out.”¹⁹⁰

The discovery of Chinese consumers' lack of information led IFAW to develop a simple advertising campaign (“Mom, I've Got Teeth”) to clarify where ivory comes from. The campaign ran for over three years in China and reportedly reached 75% of urban Chinese consumers. Rapid Asia conducted a campaign effectiveness study to evaluate the impact of IFAW's campaign, finding that it made significant strides in both informing Chinese consumers about the origins of ivory and potentially changing their future behavior.¹⁹¹ Of those exposed to the campaign, approximately two-thirds said they would “definitely not buy ivory in the future,” with the main reason cited being “I feel it is wrong to buy ivory as elephants are killed.”¹⁹²

IFAW's campaign greatly reduced Chinese consumers' “ignorance” regarding the origins of ivory, but there are certainly millions of Chinese who still think that “elephant teeth” fall out of the mouths of living elephants. Thus, more work needs to be done to combat remaining ignorance. In addition, Rapid Asia recommended that future messaging should push harder to highlight other facts about the ivory trade that consumers still do not understand, including the sheer number of elephants being killed, the threat of extinction, and the fact that legal purchases of ivory can stimulate illegal trade and trafficking.¹⁹³

- **Apathy**

Awareness does not equal action. Even if every Chinese consumer were fully aware of the origins of ivory and the extent of the current crisis, it may not be enough to drive them change their behavior.¹⁹⁴ One way to encourage action among an otherwise “apathetic” audience is to capitalize on the same psychological drivers leading consumers to buy ivory in the first place: a desire for social status and prestige. This can be triggered by making ownership and gifting of ivory socially disfavored and “uncool,” and in turn making the boycott of ivory

¹⁸⁹ Space for Giants: The Ivory Trade Is Out of Control, and China Needs to Do More to Stop It (Mar, 2013).

¹⁹⁰ The New York Times: From Elephants' Mouths, an Illicit Trail to China (Mar, 2013).

¹⁹¹ IFAW: Rapid Asia Flash Report (May, 2013).

¹⁹² TRAFFIC: Behaviour Change We Can Believe In (May, 2012) (pg. 5).

¹⁹³ *Id.* at 6.

¹⁹⁴ *Id.* at 3.

products aspirational and “cool,” a movement people will want to join to gain social favor among their peers.¹⁹⁵ This method has been successful in China before, in the shark fin soup campaigns, as discussed below.

Apathy and inertia also stems from the reality that people are generally comfortable with the status quo and make excuses for carrying on with it.¹⁹⁶ It takes real effort to stop an old, learned behavior; indeed, “creating new behavior[]rs is much easier than stopping old ones.”¹⁹⁷ This barrier can be addressed by evaluating whether demand for ivory can be replaced by a substitute product that fills the same psychological and social needs that ivory formerly filled, such as exclusivity/rarity, prestige, and social status. Market research can help identify the most appropriate substitute products for the given target audience.

Finally, even those consumers who are well-informed and ready to take action may not know *how* to take action effectively, or may feel that their individual actions are inconsequential in the broader scheme of things. Campaigns can increase individuals’ sense of agency and self-efficacy by identifying small and concrete steps that they can take to make a tangible difference, with the first step being a decision not to buy or gift ivory products.¹⁹⁸ This approach may be more effective than delivering broad, vague and abstract messages such as “Save the Elephants” that do not provide instruction and leave the desired actions unclear.¹⁹⁹

E. Lessons Learned from Previous Campaigns Can Help Guide Future Efforts

As discussed above, media campaigns have proven successful at reducing demand for wildlife products in the past and can do so again in the future. At the same time, some efforts have been less effective. While we unfortunately do not have controlled forms of measurement to isolate the variables impacting relative effectiveness of prior campaigns, we can highlight best practices based on trends identified across campaigns.

1. Past Ivory Campaigns

Earlier sections of this paper discussed the historical framework that led to the urgent crisis in the late-1980’s and the subsequent CITES ivory ban in 1989. Media and communications efforts played a significant role in influencing the movements’ progress at that time. In 1989, the Discovery Channel premiered its influential documentary “Ivory Wars” to shed light on the crisis.²⁰⁰ The film did not just air in the U.S., but rather was broadcast around the globe to increase awareness. The same year, the African Wildlife Foundation released a television and print campaign (“Only Elephants Should Wear Ivory”) and its staff travelled throughout Africa to support a ban.²⁰¹ Other organizations also mounted significant public awareness campaigns. Combined, these efforts were effective, and later that year CITES banned the international ivory trade.²⁰² However, media engagement was short-lived after the ban, and

¹⁹⁵ TRAFFIC: Workshop Meeting Report (Nov, 2011) (pg. 32, 54).

¹⁹⁶ TRAFFIC: Behaviour Change We Can Believe In (May, 2012) (pg. 6).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 5.

¹⁹⁹ *Id.*

²⁰⁰ Discovery: Discovery Channel Sheds Light on Africa's Ivory Wars (June, 2012).

²⁰¹ AWF: AWF Emphatically Endorses Public Anti-Poaching Message (July, 2011).

²⁰² *Id.*

campaigns largely disappeared from public view until recently, when the crisis has again become more acute.

To be effective in the long run, future messaging must be on-going and persistent. Campaigns should not disappear at the first sign of improvement, but rather should continue to drive the message home throughout the ebbs and flow of the elephant crisis. This will ensure that the issue remains at the top of consumers' minds over the years.

2. Shark Fin Soup in China

Efforts to reduce demand for shark fin soup in China in the past eight or so years provide the closest analogy to the ivory crisis we face today due to a similar contextual background. As with ivory, shark fin consumption is heavily concentrated in China (over 95% of the annual harvest is consumed in China, Hong Kong and Taiwan).²⁰³ Shark fin soup also shares a similar cultural history with ivory: consumption of the soup dates back to the dynastic period and was served as a sign of social status and decadence.²⁰⁴ And, similar to the lack of knowledge about ivory, most consumers (80%) simply did not understand the origins of "fish wing soup" or the practices involved.²⁰⁵

While we cannot know for sure which components most directly led to the success of these campaigns, a few strategies stand out as effective. First, WildAid enlisted the help of well-known, local celebrities, including Jackie Chan and basketball player Yao Ming (also used David Beckham, who is well-known in China). Use of these celebrities on billboards and video spots drew more attention to the cause than it otherwise would have received. In addition, WildAid employed simple and consistent messaging ("When the buying stops, the killing can too") that carried over across every advertisement, allowing consumers to quickly recognize and internalize the messaging. Finally, WildAid capitalized on Chinese consumers' desire for social acceptance by highlighting the "shame" that would become them if they ordered shark fin soup at a restaurant.

At the same time, Shark Savers (a WildAid partner) activated a separate campaign to reduce demand for shark fin soup, using the tagline "I'm FINished with Fins."²⁰⁶ The images portrayed pictures of prominent celebrity "ambassadors" blocking their mouths, a sign of rejecting the soup.²⁰⁷ The self-stated goal of the campaign was to make conservation socially acceptable after research had revealed that many Chinese consumers "felt social pressure to continue to serve or eat it."²⁰⁸

WildAid/Shark Savers messaging aired more than 2,000 times on China's largest television network, and was seen on over 1,000 billboards in large cities, reaching hundreds of millions of consumers.²⁰⁹ And it paid off: as discussed above, the campaigns by WildAid and Shark Savers succeeded in reducing consumption of shark fin soup by 50-70% in only two

²⁰³ The Independent: Shark Fin Soup Off the Menu (Sep, 2013).

²⁰⁴ BBC News: Hong Kong Shark Fin Trade Declines (Mar, 2013).

²⁰⁵ The Washington Post: In China, victory for wildlife conservation (Oct, 2013).

²⁰⁶ Two Fish Divers: Shark Savers Campaign (Dec, 2013).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

years.²¹⁰ In December, 2013, the Chinese government banned shark fin soup from its official banquets,²¹¹ showing leadership that will likely reduce demand further and encourage the private sector to follow suit.²¹²

3. Dolphin Slaughter in Japan

Another situation we can learn from involves the annual round-up and slaughter of dolphins in Japan's Taiji Cove, a practice that recent media efforts have failed to quell. The dolphin effort is somewhat different than the current ivory crisis in that dolphins are not endangered. Also, the Japanese fishers' practices arguably have much in common with other brutal, mass fishing techniques -- albeit ones that focus on less charismatic species and are beyond the scope of cameras.

Some conservationists and animal rights organizations have launched media campaigns in an effort to end the killing of dolphins in Taiji Cove. These efforts have been successful in terms of creating international (especially in the U.S.) outrage over Japan's dolphin killing practices. Western populations were first introduced to the issue through the 2009 Oscar-winning documentary "The Cove," which followed a covert mission to expose what happens each year in Taiji Cove.²¹³ Since then, Western media outlets have been highly engaged with reporting the event, providing daily updates of the slaughter each year along with tear-jerking images of dolphins being torn from their families amidst a sea of red blood.²¹⁴

While successful at sparking international condemnation, the practice continues, arguably because campaign efforts have not targeted the Japanese audience and the Japanese media has provided scant coverage of the dolphin hunt. Also, the international media has criticized Japan's practices as an outsider looking in, a move that fails to make a sympathetic appeal to Japanese sensibilities, but instead can -- and apparently has -- triggered a resistant defensiveness. By way of example, U.S. Ambassador Caroline Kennedy's tweet in January that she was "deeply concerned by inhumaneness of drive hunt dolphin killing," went viral and triggered the type of response typified by this comment from a Japanese citizen: "She refers to humanitarian treatment to animals. What about the atomic bombing, Agent Orange and missiles falling on civilians in the Middle East?"²¹⁵ Conservationists may have been more effective had they developed a campaign that targeted the Japanese population and used local voices to encourage behavioral change -- the type of strategy that WildAid has been employing in China.

4. Consumption of Dogs & Cat Meat in China

In recent years, significant controversy has surrounded the availability of dog and cat meat for human consumption in China. In addition to upsetting dog and cat owners, ambiguity

²¹⁰ The Washington Post: In China, victory for wildlife conservation (Oct, 2013).

²¹¹ *Id.* Note that some think it was the government ban (and other state-initiated action) that "tipped the balance" against consumption of shark fins.

²¹² Huff Post: China Bans Shark Fin Soup at State Banquets (Dec, 2013).

²¹³ "The Cove" website.

²¹⁴ CNN: Group: Stressed, bloody dolphins await slaughter (Jan, 2014).; The New York Times: Dolphins Killed in Japan's Taiji Cove (Jan, 2014).

²¹⁵ CNN: Japan Officials Defend Dolphin Hunting (Jan, 2014).

about the origin of meat in China has raised serious sanitation and health concerns.²¹⁶ Recent efforts to address the issue have begun to get traction, and the China government has considered a consumption ban since 2010, but the practice remains common in certain areas of the country.²¹⁷

In an effort to change consumer behavior and push the Chinese government to outlaw consumption of dog and cat meat, the advocacy group, Animals Asia, began an advertisement campaign in late 2013 urging citizens to stop eating cats and dogs. The billboards feature images of pets framed by chopsticks; one has a little girl sitting with two puppies and says “What You Just Put In Your Mouth Could Have Been Your Child's Partner in Growth.”²¹⁸ Over three-hundred different advertisements are displayed in large train stations and bus stations across fourteen major Chinese cities, and they all contain the tag-line “Be healthy. Say NO to Cat and Dog Meat.”²¹⁹

While it is too soon to evaluate the effectiveness of this campaign, its creative tactics are already getting attention across China. Use of highly-travelled locations such as urban train stations has ensured maximum reach in China’s fast-paced culture. Online versions of the posters have been shared more than 20,000 times.²²⁰ In a creative move, the actual actors from one of the advertisements (i.e. two puppies) were brought to the Guangzhou train station to sit in front of their billboard and greet commuters, making the issue more personal.²²¹

The images on the billboards commissioned by Animals Asia are emotionally-charged and in-your-face, a strategy that is having mixed results. Some consumers are moved by the images of attractive dogs and cats placed between chopsticks, but others have been turned off by what they see as a hypocritical implication that it is wrong to eat dogs and cats simply because they are more appealing than other animals that are killed for their meat.²²² Planners of future media campaigns should undertake market research to determine which types of messaging and images are most effective for the target audience.

F. Recommendations for Demand Reduction Initiatives in China

Creative efforts to reduce demand for ivory in China are underway and accelerating in the wake of the White House’s recent release of the U.S. National Strategy document and the London summit hosted by Prince William and Prime Minister Cameron a few days later. On March 3, 2014, Yao Ming -- in partnership with WildAid -- delivered a petition to the Chinese People's Political Consultative Conference asking China's government to ban the sale of ivory. Along with the petition, thirty-six of China’s top business leaders signed a pledge to never purchase or give ivory as a gift.²²³ On another front, IFAW has recently developed and released a Chinese version of a new mobile, interactive magazine application (“Unveiling the Ivory Trade”)

²¹⁶ Paw Nation: Say No to Cat and Dog Meat (Nov, 2013).

²¹⁷ Huff Post: Please Stop Eating Cats And Dogs, Ads Urge Consumers In China (Nov, 2013).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ South China Morning Post: Campaign Against Eating Dog & Cat (Nov, 2013).

²²¹ Huff Post: Please Stop Eating Cats And Dogs, Ads Urge Consumers In China (Nov, 2013).

²²² South China Morning Post: Campaign Against Eating Dog & Cat (Nov, 2013).

²²³ Email from WildAid to its board members (3/5/13).

to help Chinese consumers better understand the current ivory crisis.²²⁴ Green Heart Films is seeking funds to create a documentary film that will educate Chinese audiences about the ivory trade.²²⁵ And the list goes on, as many other non-governmental organizations are also currently engaged in reducing demand for ivory in China.

In November, 2013, *Southern Weekly*, one of China's most prominent newspapers, featured an article on how Chinese demand for ivory is helping to drive the elephant poaching crisis and terrorism.²²⁶ Not only was the story the first national Chinese media piece to address the issue, but the story has gone viral on social media, reaching over 10 million Chinese readers since November.²²⁷ The Wildlife Conservation Society comments that “[t]his represents an important shift for the topic of ivory from the specialist environmental pages to the mainstream debate.”²²⁸

Efforts to reduce demand for ivory in China and other consumer nations must be a key element of any effective anti-trafficking strategy. Market research should be undertaken to ensure effective messaging, and if possible, the efforts of NGO's and other parties should be coordinated. The Advisory Council can and should play an important role in coordinating and contributing to demand-reduction strategies like these in the future. Below are some general and specific recommendations on how the Advisory Council can get involved.

General Recommendations

Devote substantial financial and intellectual resources to the demand reduction effort.

- The National Strategy Document lists demand-reduction as one of its three top strategic priorities. Demand reduction should thus receive the same amount of attention and resources as are devoted to enforcement and other efforts to stop poaching at the source.

Invest in market research to understand what drives consumer demand in different markets and identify the methods that will be most successful at reducing demand within each consumer segment.

1. Market research should pay particular attention to the psychological and social drivers that influence consumers' attitudes and behaviors towards ivory.
2. Research should explore potential replacements for ivory that fulfill the same psychological and social needs that ivory does today.
3. Invest in media effectiveness research to measure the success of any future demand-reduction campaigns developed as a result of this initiative.

²²⁴ IFAW: Interactive Magazine: Unveiling the Ivory Trade.

²²⁵ indigogo: Documentary on the ivory trade and elephant slaughter.

²²⁶ WCS: Front Page Story on Ivory Trade Makes Waves in China (Dec, 2013).

²²⁷ *Id.*

²²⁸ Take Part: China to Destroy Illegal Ivory (Jan, 2014).

- 3.1.1. This research could include any of the following: surveys (in person and online), focus groups, measurement of social media buzz.
- 3.1.2. For long-term evaluation of demand reduction, research could track the number of corporations renouncing ivory and the number of stores no longer selling ivory.

We commend the Advisory Council’s creation of a subcommittee devoted to advocacy and communications. Future tasks of the subcommittee might include the following:

- a. Ensuring that demand-side strategies receive the attention and resources they deserve, as per the National Strategy Document.*
- b. Working with the appropriate government agencies and private organizations to help commission market research on effective demand reduction strategies.*
- c. Partnering with private entities and/or governments to develop media and communications campaigns in demand-side countries.*
- d. Serving as a “clearinghouse” to avoid overlapping and/or inconsistent messaging across different entities.*

Specific Campaign Ideas

In addition to the general recommendations above, below are recommendations for media campaigns in China based on the findings discussed throughout this paper.

Develop a media campaign in China that is geared to the interests and sensibilities of the Chinese people.

- **Tailor messaging** to specific audiences and specific attitudinal and behavioral drivers.
 - i. In China, communications efforts should capitalize on the importance of social status and prestige by making elephant conservation the only socially-acceptable answer.
- Use **local voices** in campaign messaging.
 - i. Engage local voices to support the cause from the inside.
 - ii. The National Strategy Document recognizes the importance of this, stating that “[w]e will implement a public diplomacy strategy that uses local voices.”
- Capitalize on the **power of celebrities**.
 - i. Celebrities should be local, popular among a diverse group of people, and credible as a voice for the movement.
- Consider holding **high-profile events** in large cities in China.
 - i. Tie back to Chinese consumers’ desire for social prestige and exclusivity by limiting admission to those who have performed a designated conservation

behavior, or to those who have won a lottery that can be entered only through desired actions.

- ii. Capitalize on the presence of celebrity ambassadors by granting a few lucky attendees (preferably those who have taken the most action for the cause) the chance to engage with the celebrity.
- **Publicly praise** individual good actors to portray that conservation is the most socially-acceptable and prestigious behavior.
 - i. Make it “cool” at “aspirational” to boycott ivory.
 - ii. Recognize good actors at high-profile events.
 - Carefully weigh the benefits and consequences of using evocative and/or disturbing **imagery**, so as not to unnecessarily push away a segment of the population that may have been receptive to the overall mission.

Evaluate whether the demand for ivory can be **replaced** by an identified **substitute** and, if so, develop a campaign encouraging Chinese purchasing and gifting the substitute product.

- Invest in market research to identify the best options.
- Replacement should fulfill the same psychological and social drivers that encourage the consumption of ivory: social status, exclusivity, rarity, etc.

Effectively utilize **social media** and other tools to encourage consumers in China to publicly discuss their conservation efforts and gain social prestige.

- Leverage Chinese consumers’ growing connectivity and persuasiveness over peers.
- Facilitate a global dialogue between communities in Africa and consumers in China on social media (e.g.: on a designated Facebook page), to help people on each end of the ivory trade “chain” better understand how their behaviors impact others across the world.

Maintain **persistent messaging** beyond times of crisis. Media campaigns should be ongoing, continuing through periods of relative improvement and success.

D. Reducing Demand for Rhino Horn

As discussed above, the market for rhino horn differs from the ivory market, both in terms of its market appeal and the location of its major market. Unlike ivory, which has a history of artistic and cultural value, rhino horn has no intrinsic value. Its demand is fueled by a fraud. Rhino horn has none of the inherent medicinal properties for which it is hawked. Also, the largest market for rhino horn is Vietnam, although it appears that China also is exerting significant market pull.

There is reason for optimism that rhino horn demand can be curbed, based on prior history. More specifically, Japan was a major market for rhino horn in the 1970s. Demand was based on horn’s role as an ingredient in traditional medicine in Japan – a similar role that it now is playing in Vietnam and China. When Japan joined CITES, however, the government imposed a ban on use of rhino horn as an ingredient by medical manufacturers which caused the demand

of the object to plummet. This was largely due to the acceptance of substitutes²²⁹ and notions that the practice of using rhino horn stemmed from Chinese culture which was not inherently Japanese.

Currently, the African Wildlife Foundation and WildAid have entered into a strategic partnership whereby the two conservation organizations will jointly develop and conduct a multimedia public awareness campaign in China, and Vietnam (together with the Vietnamese organization CHANGE) to educate people on how the horn is procured illegally by killing rhinos. According to their websites, the AWF/WildAid campaign will develop a series of high-impact public service announcements (PSAs) featuring leading Asian figures in sports, entertainment and business to generate social pressure against rhino horn consumption. Outreach will be conducted via television broadcasts, online short films, billboards and transit ads, airport advertisements and an extensive social media campaign. Particular attention will be paid to developing government support for the campaign.

We recommend that a significant public education and behavior change-oriented campaign be undertaken to reduce the demand for rhino horn in Vietnam and China. Many of the techniques recommended in connection with the anti-ivory campaign are equally applicable to an anti-horn campaign, including the engagement of leaders of the country, celebrities, and major business interests to convince and incentivize Asian countries with high demand for rhino horn to ban the product from local markets.

E. Using Demand Reduction Media Strategies in Range Countries

As noted above, there is compelling evidence that a demand reduction strategy that focuses on educating consumers about the impact that their ivory and horn purchases are having on populations of iconic elephants and rhinos, and which seeks to change such consumers' buying habits, can be effective, if it is undertaken in a professional and well-thought out manner.

In a similar vein, a media strategy that seeks to educate people in range nations about the killings that are taking place within their own countries, and the severe impacts that poaching is having on their country's natural and financial resources, potentially can create the same type of social pressures against poachers and their enablers that campaigns in consumer nations are creating against the purchase of illegal wildlife parts. If media initiatives are coordinated with renewed efforts in range countries to identify and bring to justice the kingpins and middlemen who are largely responsible for the poaching activity, the public opinion of largely disengaged indigenous populations could shift in favor of vigorous enforcement and prosecution efforts.

For all of these reasons, we recommend that media strategies drawing attention to the wildlife trafficking crisis not be limited to demand-side nations, but also be used in range nations which are bearing the brunt of poaching crisis and which have the most to lose if poaching is not brought under control.

²²⁹ Martin, 1983