ADVISORY COUNCIL ON WILDLIFE TRAFFICKING MEETING

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

Dec 16, 2013

PRINCIPAL ATTENDEES

U.S. Fish and Wildlife Service

Sally Jewell	Secretary, Department of Interior
Daniel Ashe	Director, U.S. Fish & Wildlife Service
Robert Dreher	Acting Assistant Attorney General, U.S. Department of Justice ENRD
Judith Garber	Principal Deputy Assistant Secretary, U.S. Department of State OES

Committee Members

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

Alternate Committee Members

Crawford Allen	Senior Director TRAFFIC, Washington, D.C.
Stanley Asah	Assistant Professor University of Washington
Marcus Asner	Partner Arnold & Porter LLP
Susan Lieberman	Executive Director, Conservation Policy, Wildlife Conservation Society

PROCESS SUPPORT

Bryan Arroyo, Designated Federal Officer, Assistant Director – International Affairs, U.S. Fish & Wildlife Service

MEETING PURPOSE

For the Advisory Council on Wildlife Trafficking to first meet, establish Council process and protocol, and provide expertise and support to the Task Force as it develops the National Strategy for Combating Wildlife Trafficking.

MEETING OBJECTIVES

- To establish rules of process and other administrative protocols with the Council
- To offer the Committee members an opportunity to provide comments on issues for the Task Force to consider in drafting the National Strategy for Combating Wildlife Trafficking
- To receive input from the public at large regarding wildlife trafficking and poaching activities and enforcement

SUMMARY DISCLAIMER:

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

WELCOME AND INTRODUCTIONS

U.S. Fish and Wildlife Service Opening Comments

Dan Ashe, Director of the U.S. Fish & Wildlife Service, welcomed members of the Advisory Council and thanked them for their public Service. The Service recognizes, along with our Task Force co-chairing agencies, that the issue of wildlife trafficking is a priority for all of government, and that the Task Force will require the assistance of the public to crack down on wildlife trafficking. Dan then introduced Secretary Sally Jewell and subsequently introduced Acting Assistant Attorney General Robert (Bob) Dreher and Principal Deputy Assistant Secretary Judith (Judy) Garber.

Secretary Jewell's Remarks

Secretary Jewell thanked the members of the advisory Council for their service as well as the Task Force co-chair leadership for their commitment in working together with Interior in addressing the issues surrounding wildlife trafficking. Secretary Jewell noted that wildlife trafficking is an uphill battle, requiring diligent action on behalf of the international community at large to be successful in addressing wildlife trafficking. Secretary Jewell noted the risks wildlife trafficking also poses to national security and how impactful the poaching of these species is to people, emotionally and economically. Secretary Jewell noted that we will need to combine our world-class enforcement expertise with other Nations, looking for ways that we can work in partnership with other countries and be supportive. Recently, we destroyed 6 tons of illegal ivory at the Ivory Crush seized over the last 25 years. This was a tremendously symbolic gesture. In spite of this, we need the help of the public. There are numerous species which are imperil and the human impacts are also significant. In the Democratic Republic of Congo, Virunga National Park, 150 park rangers have been killed over the last 20 years. This destabilizes local economies and robs countries of their sustainable futures. We will and we must work collaboratively if we're to make a difference and ensure that these species have an opportunity to thrive.

Acting Assistant Attorney General Bob Dreher's Remarks

Thank you all for being here today; I know the expertise that we've assembled on this Council is top-notch and we're very excited to work with you all. We're also excited about the attention the President's executive order has brought to the issue of Wildlife Trafficking. Wildlife trafficking is not only a threat to international conservation, but also a threat to world order and national security. The level of response we need to bring is urgent and undoubtedly effective law enforcement will be a critical component of this effort moving forward. We've had significant success over the years in prosecuting traffickers, enforcing strict penalties for these serious crimes including jail time, stiff financial penalties, and possibly restitution payments to affected governments. We have worked across agencies on operations such as Operation Crash, a multi-agency crackdown on multi-million dollar trade of rhinoceros horn. There's still a lot to do, and we all need to step-up in working together closely. We need to bring our resources and networks together to continue to combat wildlife trafficking.

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Principal Deputy Assistant Secretary Judy Garber's Remarks

I'm honored to be here and to represent the State Department as one of the co-chairing agencies to this effort. Secretary Kerry has long been a champion of combatting wildlife trafficking and we are pleased to continue these efforts under the President's executive order. As the co-chairing agencies have all said, we can't do this alone. The U.S. government must work with all of our partners, domestic and international to combat this pernicious illegal trade. As a part of our diplomacy, we've been elevating the issue of wildlife trafficking. We have elevated issues of demand reduction in international forums such as APEC and the G8. We have also highlighted this issue in our bilateral relationships with key countries such as China. We will continue to address these issues with range states, transit countries, and demand States in taking action to combat this illicit trade. We are also targeting criminals globally, working bilaterally and multilaterally to support our colleagues and strengthen law enforcement in range and consumer States. Additionally, under the Transnational Organized Crime Strategy, Secretary Kerry recently announced the first award under this program against a criminal organization that is heavily involved in wildlife trafficking. While we've made good progress, I believe we all agree more still needs to be done. I look forward to the input of the Council and thank you all again.

Director Dan Ashe then thanked the co-chairing agencies and turned the floor over to Ms. Judith McHale, Chair of the Advisory council

Advisory Council Chair Judith McHale's Remarks

Welcome everyone. I'm delighted that you could all join us today to discuss this critically important topic. The Council has been looking forward to this meeting since being rescheduled due to the government shut-down. As you all know, the executive order elaborates upon the reduced economic, social, and environmental impacts that are important to all nations caused by of wildlife trafficking, while generating billions of dollars in illicit revenues each year, contributing to the illegal economy, fueling instability, and undermining security. The Executive order also established a cabinet level Presidential Task Force that is responsible for drafting a National Strategy for Combating Wildlife Trafficking. The Strategy will include consideration of issues relating to combating trafficking and curbing consumer demand, including: (i) effective support for anti-poaching activities; (ii) coordinating regional law enforcement efforts; (iii) developing and supporting effective legal enforcement mechanisms; and (iv) developing strategies to reduce illicit trade and reduce consumer demand for trade in protected species. The Advisory Council's role is to provide expertise and support to the Task Force in providing recommendations to the Strategy and implement the priorities laid out by the President. We are committed to providing an outside perspective to the Task Force and representing you, the public at large. As a matter of business, I would like the Council members and the alternates to work collaboratively as a team. The Council shall also go about its business proceeding on a consensus basis. I also don't believe we'll need to conduct formal votes on most Council matters, but reserve the right to call a formal vote should it be appropriate to do so. I also believe the Council should request to organize three subcommittees, they are: Enforcement Effectiveness; Communication and Advocacy; and the Legal Reform and Structure Subcommittees. As an additional administrative matter, I've also asked Mr. Hayes to serve as my vice-chair. I would like these rules to remain flexible and mindful of the fact that these rules may be adjusted as necessary. I look forward to hearing suggestions from the public that can help inform the input from the Task Force.

For the benefit of the public an outline of the draft Strategy has been provided to the Council and the public. It should be emphasized that the content within does not reflect the administrations official position at this point. Because the Task Force is closing in on the submittal, much of the hard work will need to be done in the implementation phase. To kick this off, I'd like to begin discussing key issues surrounding each subcommittee. I'd like to ask the Council to provide their thoughts on these topics and to have a dialogue with the administration and within the Council.

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Advisory Council Discussion:

- The Council first discussed the legal framework around wildlife trafficking, noting that we in the United States generally look abroad regarding wildlife trafficking issues when in fact the United States is a prominent consumer country and a transit country.

- Recognizing the significance of other non-ivory species subject to wildlife trafficking, the Council noted when it comes to the United States' trade of ivory it appears that the law is unclear regarding trade within the United States as opposed to internationally. Are there ways to make clearer these domestic laws?

- Up to this point, there are legal routes for trade within the United States. This trade is supported by provisions of the Endangered Species Act (ESA) and is consistent with our Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) membership. It is a complex picture but there is legal trade in African Elephant ivory in the United States.

- There are steps that could clarify these provisions – revoking the 4(d) rule under the (ESA) for African Elephants could be an option and the exceptions to the moratorium under the African Elephant Conservation Act (AECA) could also be clarified. The Service is reviewing potential administrative options at this point. However, it may be possible to end commercial trade of ivory (elephant and rhino) in the U.S., with a narrow exemption for antiques statutorily exempted under the ESA.

- The Council highlighted the letter Senator Feinstein sent a to Secretary Jewell as a co-chair of the Task Force, noting that exemptions under current regulations have made enforcement difficult and encouraging the Secretary to eliminate the special rule on African elephant ivory and law enforcement memoranda 24, which would reduce the ivory market, and utilize the Department's authority under CITES, the ESA, and the AECA.

- LE memo 24 relates to the movement of antiques. Presently, the statutory exemptions for antiques under the ESA are difficult to understand. The Service has clarified these exemptions to be more broad cohesive under the AECA and interpreting the statutory exemption under the ESA. The statutory exemption states that an item must be more than 100 years old; it can't have been subsequently modified to incorporate endangered species parts, and must be imported through one of 13 designated ports. That is to say, if an antique were made in the United States and therefore not shipped through a designated port, it would not be considered an antique. This has complicated law enforcement efforts.

- The Council noted that additional clarity would be required in the National Strategy to remove the ambiguity surrounding the ivory trade and educate well-meaning citizens about the impacts of ivory trade.

- The Council then moved to discuss issues further surrounding enforcement. The Council noted that the issue at hand for law enforcement relates again to regulations. Within a certain age, it is impossible for law enforcement officials to identify the difference between lawfully imported ivory, and unlawfully imported ivory. As such, there's an abundance of domestic ivory trade that simply can't be interdicted at present. Most ivory cases are those that have been interdicted at ports of entry where it's clear that it is illegal.

- The Council noted that it could be helpful to consider a domestic moratorium on interstate sales and commerce as a starting point, noting the enforcement limitation of sales that could occur intrastate, noting the importance of the 5th amendment and wanting to avoid a due-process taking. However, the Council noted that the Supreme Court has previously set a standard for the regulation of wildlife products as it pertains to the Migratory Bird Treaty Act (MBTA).

- The Council noted that because ivory trade is not an underlying illegal activity, many online users, such as those who use platforms like eBay, to continue to trade in ivory despite the fact that eBay has

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in place restrictions on ivory product trade. From a business perspective, the Council noted that a total ban would be the easiest administrative solution, notwithstanding the 5th amendment question. This would also set an international example as well for other online platforms. The Council again noted that businesses struggle with the ESA exemptions and proving these exemptions as well.

- The Council stated that there is good evidence that unregulated domestic markets are fueling wildlife trafficking. However, the Council recognized that this demand was being driven by commercial trade, not sport-hunts. The Council suggested that moratorium on U.S. domestic ivory sales could significantly influence other governments to adopt their own domestic moratoriums. Given the tight timeframe regarding species impacts, it was suggested that a legislative fix may be necessary to address immediate impacts. Public education and demand reduction would take additional time.

- The Council stated the importance of U.S. leadership, which has encouraged other countries to take action (i.e. the Crush and other Crush events happening around the world). Referring to the wild bird trade moratorium, the Council drew an analogous comparison to the current poaching crisis, recognizing the success the wild bird trade moratorium once had now 20 years ago.

- The State Department noted that indeed U.S. leadership should not be overlooked as being a catalyst for change globally, with the Crush being a prime example. It is therefore possible that a domestic moratorium could help in intergovernmental discussions regarding combating wildlife trafficking and illegal trade.

- The Council discussed the difference between a ban as compared to a moratorium. The Council noted that mixed messages and nuance do not serve policy well, indicating that clarity and simplicity is essential for law enforcement and conservation advocacy. Sending a signal to the market that the ivory market is closed forever, could significantly simplify the message. If the goal is to shutdown domestic ivory trade, both in the U.S. and internationally, a clear signal must be sent. The Council also evaluated past conservation endeavors including CITES limited domestic reach and voting rules, as well as the experimental sales of ivory. The Council noted that CITES is also only as good as the countries' enforcement capacity and that the U.S. should hold a strong presence on the standing committee.

- The Council discussed how the U.S. could assist range countries in legal enforcement capacity building. The Council noted that there are a lot of models that the U.S. has been involved in that have gone very well through holistic support (i.e. community involvement, enforcement, judicial support etc.). Success has not happened over night and it has in some cases has taken 10 – 15 years. Having U.S. staff support in range countries is an important component. The Council noted such models in places such as WWF's model in Namibia, WCS's model in Zambia, AWF's model in Tanzania and Kenya, Africa Park's law enforcement model, and others were noted as well.

- The Council discussed the use of technology with enforcement efforts. The Council noted that management of available resources through holistic leveraging and a model approach is the most important factor for effective enforcement efforts. A moratorium without enforcement does nothing without enforcement from the top down as well as the bottom up.

- The Council noted that technology is not a silver bullet; coordinated boots on the ground is an essential component as well. It is important that the penalties to poachers are made more significant – compensating victim countries, companies, and others injured to alter the cost/benefit analysis to wildlife trafficking. This provides an incentive to victim countries to cooperate with the U.S. Statutory fixes may be necessary to establish reliable compensation for wildlife trafficking specifically, as well as administrative fixes. The laws in range countries also need to be adjusted, where in some cases they can establish perverse incentives due to loop-holes and mild penalties for traffickers as opposed to poachers. From the security angle, traffickers are most concerned about looking for avenues where they're least likely to get caught and where they're most likely to make money. Treating wildlife

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trafficking the same as drug trafficking will significantly change the way in which traffickers consider their risks and rewards.

- The Council recommended establishing best legal practices and economic conservation models for range countries, as well as impressing upon judges the seriousness of wildlife crimes.

- The Council revisited the importance of the balance of enforcement and development, how building value beyond esoteric value around wildlife in range countries plays a critical role in establishing lasting results for conservation. A monetary return is a significant component to consider in creating value around wildlife.

- The Council suggested establishing a single information portal to share information between the private and public sector.

- The Council noted the linkages between wildlife trafficking and the financing of insurgency and terrorist organizations. As a Council, it is important to highlight these overlaps and consider where we can provide information going forward to contribute to global security. The Council also suggested that bringing together the various intelligence agencies to look at these linkages

- The Council noted that the boots on the ground need to have the skills, tools, and lack of corruption to have a meaningful impact, and the United States need to assist in providing these resources above and beyond current efforts.

- The Council moved to discuss demand reduction. There are several examples of strong successful demand reduction a campaign, including recent work on shark-fin soup and the steps the Chinese Government has recently taken in not serving shark-fin soup at banquets, which has influenced the Chinese population at large. The Council noted that influencing governments through public advocacy and public awareness also should play a role.

- The Council discussed scaling for demand reduction efforts and the role of government to government relations, public affairs, and impunity and corruption issues in range countries. It was noted that in each case, a market specific approach could be advantageous, evaluating the extent to which governments or the private sector have a lead in moving markets. Notwithstanding this, partnerships between the private sector and governments were highlighted as critical in all cases. Scalability is also a function of partnerships.

- Price of wildlife products was discussed by the Council as well. The high price of wildlife products is seen as the driving force of demand – however this is a chicken and egg scenario. As species numbers drop, prices go up and demand goes up. Breaking this cycle is critical and the public has to see wildlife trafficking and its impacts as socially harmful and be willing to assist governments.

- Educating the public was addressed by the Council as well. Some markets are open and obviously perceived by the public, while other markets operate in the shadows (i.e. tiger bones etc.). The public needs to ask the question of where did my ivory come from. A strategy needs to be built around each issue, as each is a unique commodity. Unconventional partnerships with celebrities and companies could have huge impacts domestically and abroad (e.g. American Zoos and Aquariums Association).

- The Council noted that awareness does not necessarily lead to a change in behavior, both in governments and governments. There needs to be carrots and sticks such as the Tropical Forest Conservation Act for debt swaps, as well as penalties with uncooperative governments.

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