



AMERICAN  
INSTITUTE FOR  
CONSERVATION  
OF HISTORIC AND  
ARTISTIC WORKS

# POSITION PAPER

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American Institute for Conservation of Historic and Artistic Works

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## **The Preservation of Cultural Property with respect to U.S. Government Regulation of African Elephant Ivory**

This paper presents the American Institute for Conservation of Historic and Artistic Works' (AIC) position on the impact of U.S. government actions on cultural property, legislation, and regulations relating to African elephant ivory. While many organizations in the U.S. work to protect threatened species, AIC may be the only organization formed specifically to protect cultural heritage properties, including those fabricated all or partly of materials derived from endangered species. This makes it essential for AIC to state its position on this important issue.

While we wholeheartedly support efforts to protect endangered elephants, we wish to call attention to the fact that current efforts to protect African elephants from extinction may also result in inadvertent damage to *historic* cultural artifacts that are made of, or with, ivory. We support those regulations that respect both the preservation of elephants and of legally obtained cultural property made of, or containing, ivory. We put forth recommendations here to reliably achieve this objective, and we offer to work with regulatory bodies to ensure that both conservation concerns are addressed.

### **Background**

Illegal elephant poaching is driven by the demand for ivory and the ivory trade. Recognizing that the very survival of the African elephant species is at stake, the U.S. Fish and Wildlife Service (FWS) has banned U.S. trade in African elephant ivory by prohibiting all commercial imports and exports of raw and worked ivory, regardless of age, and has limited commercial exports to worked antique ivory. Non-commercial import and export rules differ, and if certain criteria are met, traveling exhibitions with ivory objects are allowed. Further restrictions have been placed on foreign commerce, and interstate commerce will be limited to antique items and those incorporating small amounts of ivory within a larger object. Although the rule does not affect intrastate commerce, a number of states are attempting to put in place further legal restrictions on the sale and possession of African elephant ivory.

In tandem with these legal actions, FWS, in partnership with wildlife advocacy groups, has staged public ivory crushes to protest elephant poaching. These crushes, which destroy confiscated illegal raw and worked ivory, highlight the dangerously diminishing elephant populations. The complete destruction of the ivory by crushing it into small pieces ensures that it cannot re-enter the ivory market.

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## AIC's Position

AIC, the national organization representing conservation<sup>1</sup> professionals working in institutions such as museums and regional centers, as well as in private practice, honors the history of achievements in the humanities and science through the preservation of cultural heritage. It sets out a code of ethics and guidelines for practice for its members. The AIC Code of Ethics states, “III. While recognizing the right of society to make appropriate and respectful use of cultural property, the conservation professional shall serve as an advocate for the preservation of cultural property.” Accordingly, we must take a stand for the protection of cultural property, including items made with ivory.

As conservators, we support elephant conservation efforts and respect laws that halt illegal trafficking of new raw and worked ivory. At the same time, we must seek the protection of cultural property that was obtained in full compliance with legal regulations at the time of acquisition. Therefore, we advocate for protecting permitted, legally acquired worked ivories from unnecessary destruction, destructive testing, and possible confiscation.

Further, we advocate for language in Director's Order (DO) 210, Appendix 1, Section 7 that recognizes the expertise of appropriately trained art conservation professionals as able to provide a qualified appraisal for documentary evidence.

### *Species Identification*

Changes to the Endangered Species Act (ESA) 4(d) rule, have placed new focus on species identification for ivory artifacts. Since transit requirements differ for Asian and African elephant, two different species, it is critical to know which rules apply. In addition to the rule, it is our understanding that to meet the requirements for importing an ESA antique ivory artifact, a declaration must be signed that identifies the ivory to species level. In order to distinguish among most types of ivory (i.e. elephant, mammoth, hippopotamus, walrus, narwhal), careful examination can reveal the animal's taxonomic family, which is sufficient to determine which laws apply to that artifact. On the other hand, there are currently no non-destructive techniques to reliably distinguish between African (*Loxodonta africana*) and Asian elephant (*Elephas maximus*) species and sub-species. For non-commercial transit, with artifacts that date more than 100 years old, this level of species identification does not change how the law is applied and does not contribute to a better understanding of current illicit trade routes. Therefore, we advocate that identification to the family level, rather than species level, be required for ESA antique worked elephant ivories if it meets all other ESA antique requirements.

### *Dating*

Transit requirements also call for determination of the age of elephant ivory artifacts. In order to accurately date ivory, destructive testing is required. For non-commercial transit, with legal pre-Convention artifacts, definitive dating does not contribute to a better understanding of current illicit trade routes. We support policy that allows written and photographic records, documentation, and history to reliably establish legal acquisition and age of ivory artifacts.

### *Destruction by Crushing*

We understand that planned destruction of illegal ivory stockpiles is an organized strategy to draw

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<sup>1</sup> Note that the word “conservation” in this context refers to cultural artifacts and not to wildlife or the environment.

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attention to the atrocities of the current ivory industry and associated poaching and exploitation of the elephant. Our concern is that confiscated historical ivories of cultural significance could be destroyed along with unworked or modern productions. It is also possible that ivory of other species may be mixed in with African and Asian elephant ivory. Therefore, we advocate that donations and confiscated material destined for destruction be pre-screened by cultural heritage experts. Objects of cultural or scientific value should be saved for their research value or preserved as cultural property. A precedent for successful pre-screening already exists. We advocate that pre-screening by cultural heritage experts becomes a formalized part of any crush event.

### **Summary of recommendations**

- Protect legally acquired worked ivories from destruction, destructive testing, and possible confiscation.
- Add language to DO 210, Appendix 1, Section 7 to recognize the expertise of appropriately trained art conservation professionals to carry out qualified appraisals.
- Accept family-level identification for ESA antique worked elephant ivories if it meets all other ESA requirements.
- Accept documentation that reliably establishes ownership dating to 1976 or before (pre-Convention) as proof that the ivory was legally obtained, and as antique if documentation demonstrates a history over 100 years.
- Incorporate a pre-screening process by cultural heritage experts as a part of any event that destroys donated or confiscated worked ivory artifacts.

### **Conclusion**

AIC rejects the ivory trade and all illicit trade entirely. Nevertheless, we consider it also important that extant legally-obtained ivory cultural objects be protected from unnecessary whole or partial destruction. These objects reveal not only the history of human culture, technology, and artistry but also our historical relationship with elephants. We believe that respecting the cultural, legal, and ethical issues regarding the conservation of the African elephant is not mutually exclusive from preserving historic and artistic examples of ivory cultural heritage. We intend to work towards finding solutions that satisfy all elements. We look forward to a continued dialogue as we work through these complex issues together.

### **References**

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)  
Endangered Species Act (ESA, 1973)  
Appendix to Director's Order 210  
AIC Code of Ethics

*Prepared for AIC by Nina Owczarek, Stephanie Hornbeck, Jean D. Portell, and Terry Drayman-Weisser*