

**OPPOSITION TO PROPOSED REVISIONS
TO RULE 4(d) FOR THE AFRICAN ELEPHANT
50 CFR Part 17**

Docket No. FWS-HQ-IA-2013-0091;
96300-1671-0000-R4

**HARRIS/RAGAN
MANAGEMENT
GROUP**



PUBLIC POLICY CONSULTATION, MANAGEMENT
SERVICES, AND PUBLISHING ACTIVITIES SINCE 1968.

The U.S. Fish and Wildlife Service needs to offer a substantive justification for basing a major element of Rule 4(d) on an outmoded definition of what is or is not an *antique*.

Los Angeles
Washington, DC

- Using the *economic* reasoning behind the Smoot-Hawley Tariff Act of 1930 hardly seems relevant to the need to protect and preserve artifacts for American society that are culturally significant, historically noteworthy, and artistically important.
- Using an antiquated and inadequate definition is contrary to the commitment of the Service to adhere to the underlying spirit of the Office of Management and Budget's goal of getting the Nation's regulatory system "to promote predictability, reduce uncertainty, and to use the best, most innovative, and least burdensome tools." [Federal Register, July 29, 2015, p. 45175(a)].

Under the current 4(d) rule, import of raw or worked ivory other than sport-hunted trophies is allowed only if it is a bona fide "antique" greater than 100 years old. [Code of Federal Regulations, p. 41566 (c)] Yet, Huon Mallalieu, in the 1993 edition of *The Illustrated History of Antiques* notes that "'antique' is not a precise term; many things are avidly collected which are not (100 years old)..." Mallalieu quotes Thomas Rowlandson, an English watercolorist who in 1800 drew an auctioneer offering a chamber pot with the caption: "What am I to bid for tomorrow's antique?"

In the *Concise Encyclopedia of American Antiques* (Hawthorn Books, 1969), Editor Helen Comstock writes on page 21 that "... the requirement (that an antique be made) 'before 1830' coincides with the beginning of the machine age (and) the decline of the individual craftsman working in a tradition handed down from master to apprentice." But then she immediately notes that many of the expert contributors to her encyclopedia "felt obliged to carry their subjects to mid-century, as in regard to clocks; or the 1876 Philadelphia Centennial (printed textiles); or even the end of the century (painting, Victorian furniture, art glass.)" In short, the definition breaks down even before it can be consistently applied.

The definition of antique so often used in the United States turns out to have no relationship to the concept on which it is based. The drafters of Smoot-Hawley wanted to establish a way to differentiate "unrestricted" imports from "restricted" imports. The later were competitive with the output of U.S. industries and thought to be hurting a troubled economy. The drafters hit upon 100 years only because 1830, as noted above, was said to be the dividing line in the US between a preponderance of goods being made by hand and

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those created by factories. Having asserted this fact, however, no challenge to the declaration is known to have been made and substantiation for it is hard to come by. More significantly, the 100 years has no artistic or cultural basis. It is merely an accident of the calendar. Indeed, Professor Douglas A. Irwin in his book, *Peddling Protectionism*, states on the flyleaf that Smoot-Hawley started "as a Republican ploy to win the farm vote in the 1928 election by increasing duties on agricultural imports, (but) the tariff quickly grew into a logrolling, pork barrel free-for-all in which duties were increased all around, regardless of the interests of consumers or exporters."

Legislation known to be so cravenly political ought not to be considered definitive for something as important to our culture as the protection of some of its most significant historic artifacts.

If a review of Rule 4(d) were to accomplish nothing else, it ought to eliminate the 100-year standard from American interpretations of antique. In gun collecting, for example, the dividing line between antique firearms and modern weapons is January 1, 1899. In the UK, anything made before 1949 is considered antique. The European Union uses a moving 50-year scale. Anything made before 1965 is an antique in 2015; in 2016, the starting point will shift to 1966. In Spanish speaking countries under the guidance of the *Real Academia de la Lengua*, "antiques" are thought of as older items with the potential of cultural significance; they are not burdened by a specific number of years.

The important contributions of the Art Deco period and the post-War era to the development of artistic and decorative contributions should not be blithely dismissed by the U.S. government. By the same token, should classic cars from the 1920s, 30s and 40s, some of which contain ivory fittings, be ignored by what amounts to an antiquated definition? Different computer hardware didn't appear until the 1970s, FAX machines came to market in the 1980s, and cellular telephones are items of this century. Are all the early models of these wondrous technologies to be ignored for 50 or more years, rather than preserved and protected, just because they are too new for the definition adopted from Smoot-Hawley? Judith Miller, writing in *Miller's Antique Encyclopedia*, states that an arbitrary age is no longer a meaningful condition of what is worthy or not to collect.

If the Fish and Wildlife Service fails to take the opportunity to adopt a more inclusive definition of "antique" in Rule 4(d), it will perpetuate a reference that has nothing to do with what is or is not an artifact worthy of preservation. Previous erroneous interpretations of the 100 year reference in Smoot-Hawley should not be allowed to continue in perpetuity. Slavish adherence to the concept of *stare decisis* here, no matter its proper role in judicial practice, would leave us culturally mired in the last century.

For Harris/Ragan Management Group

Godfrey Harris, President

September 20, 2015