

John Sexton  
1962 Portage Landing North  
North Palm Beach, FL 33408

(9-30-2014, ESA CERTIFICATION OF ANTIQUITY, Colt M-1862, SN 23642 with Ivory Stocks)

September 30, 2014

Steve Ardia  
1514 Piper Dunes Place  
Amelia Island, FL 32034

To whom it may concern,

At your request, I have examined a Colt Model 1862 police percussion army revolver with ivory stocks to certify its exemption as "ESA antique" under Endangered Species Act (ESA) guidelines 16 United States Code 1539 (h) for legal sale in the United States or legal export. ESA Director's order 210 has exacting requirements for this certification on items containing elephant ivory. All elements of these requirements are including in this report which should be retained with the subject pistol (see **Appendix 1, page 13**). I examined these objects at James D Julia Auction Gallery, 203 Skowhegan Road, Fairfield, ME. Findings can be found in this report and photographs and comments in the addendum of this report. Controlling the illegal trade of poached ivory is important to everyone on our planet. In the family Elephantidae, only two living species are left extant. My assignment here is to certify the ivory in this report is indeed "antique" and not in any way exacerbates the current illegal trade in Elephant ivory. I, John Sexton, signer of this report have not now or ever been disqualified by any government agency from preparing appraisal reports or certifications. I am aware that there are civil and or criminal penalties for filing a false report under "16 United States Code 1540".

The appraiser signed below, John Sexton holds himself out to the public as a professional appraiser and consultant of "Historic Americana" especially historic American memorabilia such as this antique ivory gripped firearms. The appraiser has previously appraised similar works for other clients but this is my first consultation on this particular object.

I conducted my inspection of property evaluated September 29-30 in presence of several members of Julia staff including Tara Schmitt, Wes Dillon, and Jack Stepp. I made notes and photographs from 8:00 AM till about 6:00 pm each day. It is my understanding that that this object is currently consigned for sale as of this date to James D. Julia Inc. This report is not an indication of title or ownership.

Without any past, present, or contemplated future interest or bias which might tend to prevent a fair and objective evaluation I declare:

***In summary, the Colt M-1862 Police revolves, Serial number 23642 with "Loxodonta Africana" ivory grips, is certified to be "ESA antique" allowing legal sale in the United States or exportation.***

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“ESA antique” is defined and enforcement detailed in United States Code (U.S.C.) regulation:

United States Department of the Interior: Fish and Wildlife Service Director’s Order 210, (February 25, 2014, updated May 15, 2014) Appendix A: Guidance on the Antique Exception under the Endangered Species Act (ESA) states how the Fish and Wildlife Service will enforce the “*antique exception*” to the prohibitions of the ESA:

*The ESA Amendments of 1978 amended the 1973 Act (16 U.S.C. 1539 (h)) to allow the importation and other activities without an ESA permit of an antique article (referred to as an “ESA antique”) that:*

- A. Is not less than 100 years of age,*
- B. Is composed in whole or in part of any endangered species or threatened species listed under section 1533 of the Act;*
- C. Has not been repaired or modified with any part of any such species on or after December 28, 1973; and*
- D. **\*\*is entered at a port<sup>1</sup> designated for the import of ESA antiques.***

*\*\*The prohibitions under 16 U.S.C. 1533(d) and 16 U.S.C. 1538 (a) and (c) will not be enforced against items that meet elements A, B, and C above but not element D and were imported prior to September 22, 1982, or were created in the United States and never imported. Therefore, articles that meet the ESA antique exception may be sold in interstate commerce, imported, exported, and used in other ways that would otherwise be prohibited under the ESA, without an ESA permit. (See **Appendix 2, p 14**)*

**\*\*Therefore, sections A, B, and C only apply to this object as it was manufactured entirely in the United States in 1863. This is shown by published data of serial numbers by Colt Arms Company in many texts.**

Without any past, present, or contemplated future interest which might tend to prevent a fair and unbiased appraisal, I declare qualities evaluated as fact. “ESA antique” definition applies to subject antique Samuel Colt revolvers and exemption from any ESA violation of USC 16 section 1539. Qualification is based solely on personal research and analysis of comparative data as performed by myself as of date of September 30, 2014 according to present U.S. law. ESA executive order 210 banning sale or export of elephant ivory allows “antique exemption” as defined by 16 U.S.C. 1539 (h).

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Qualification as "ESA antique" is effective as of the date September 30, 2014. This report is intended for use of Steve Ardia, U. S. Department of Fish and Wildlife or anyone owner assigns including purchaser of this pistol. Use by others is not intended. Any other use of this report renders it null and void.

In this assignment, "certification of antiquity" has been established by opinion this article is unaltered since their manufacture utilizing Elephant ivory. This method of evaluation involves comparison of this property with similar items which were manufactured in same era that materials can be substantiated and documented. Elephant ivory both *Loxodonta Africana* (African elephant) and *Elephas Maximus* (Indian elephant) were both imported in bulk to the Connecticut valley where a thriving ivory business was established in the early 19<sup>th</sup> century. Manufacturers in New York, Boston and Philadelphia used ivory for many purposes including gun stocks (grips). Many guns were custom engraved and stocked in ivory in the United States as is this one. This particular revolver is factory engraved and stocked; serial numbers are inked contemporarily on stocks internally in grip channel. Such notables in the ivory trade were George Read, Julius and Phineas Pratt, and Samuel Merritt Comstock. Comstock originally of West Centerbrook, CT later founded Ivoryton, CT at location known as the ivory center of the United States. There is little doubt that Samuel Colt obtained his ivory from one of these local Connecticut River Valley sources. Indeed ivory stocks became a popular option on higher grade civilian arms made in CT valley as source was convenient. Julius Pratt (see John F. Walker *Ivory's Ghosts: The White Gold of History and the Fate of Elephants*, 2010) showed off a massive sheet of ivory veneer at the Crystal Palace Exposition in 1851 where Samuel Colt showed pistols stocked in ivory (see R. L. Wilson *Art of the Gun, Magnificent Colts*, 2013)

In general, the condition of the antique revolver examined was average for similar firearms found elsewhere in marketplace. Alterations from original condition and damage are noted in this and catalog description. Evaluation is based only on the readily apparent identity of the objects subject of this report. In my opinion no further guarantee of authenticity, genuineness or attribution is necessary. Colt revolvers with ivory grips are not uncommon to the market and are sold and traded regularly in the general antique trade. Several hundred antique arms can be found sold in national and international auctions after ESA 210 with ivory stocks or inlays. 1667 objects are listed on one internet auction site (LiveAuctioneers.com) currently for sell as "ivory" on September 30, 2014 and 337 items listed as "antique ivory".

The "certification of antiquity" is based on the readily apparent identification of pachyderm (elephant) ivory with characteristics well established with no destructive sampling required. Schreger angles measured in the outer portions of the tusk can be used to differentiate species of pachyderm ivory. Acute outer angles, averaging less than 90° on average are consistent with prehistoric mammoth ivory (genus *Mammuthus*). Outer Schreger angles averaging above 115° are consistent with *Loxodonta* (African elephant) and less than 115° are more consistent with *Elephas* (Indian elephant). Mean outer angle averages are about 125° on African ivory, about 110° for Asian ivory and 73° for mammoth ivory. Inner and middle Schreger angle measurements are not as definitive in identification and overlap occurs, but the mean inner and middle angles for African ivory are 78° and 95° and 68° and 88° for Indian ivory. The deviation for African ivory from mean is larger than in Indian ivory. (R. R. Singh, *Using Morphometric and Analytical Techniques to Characterize Elephant Ivory*, *Forensic Science International*

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162 (2006) pages 144-151). In study of many 19<sup>th</sup>-century ivory stocked pistols, it is noted that a vast majority if not all grips were cut longitudinally such that Schreger structure is generally evident on flats on butts. In the case of subject Colt revolver, each grip presents an "arc" with about one square inch of total cross-section surface to view Schreger structure to measure angles as with this subject. Rarely can the exact position in a tusk be determined by study of Schreger structure in worked ivory such as pistol grips but this example appears to be cut near the "bark" like many mid-19<sup>th</sup> century factory stocked Colts. Angles measured all were quite obtuse measuring 100° plus, with largest at one toe measuring a mean just about 136° near an outside toe which has an interface of more translucence which appears to be cementum which approximates outer surface of tusk. Species *Loxodonta Africana* was qualified by use of these Schreger angles in axial cross-section near this interface. Rarely do concave angles in other species reach 136° as the largest angle here. Schreger angles on grips are consistent with *Loxodonta*. Having such a good axial flat surfaces with sufficient surface area to view is not always possible as with this subject. When in cases *Elephantidae* Ivory can be determined by Schreger structure and genus-specie narrowed to only two living which of course is both banned without "antique exemption" by ESA EO 210 for commercial use in the United States. Common sense should prevail when actual species cannot be determined unequivocally to be *Loxodonta Africana* or *Elephas Maximus* by Schreger structure alone. It is absurd to require further taxonomic detail as both living genera are covered with "antique exemption" under Endangered Species Act (ESA) guidelines 16 United States Code 1539 (h) for legal sale in the United States. Scientific testing generally requires drilling "cores" into ivory and often this invasive sampling injures valuable antiques that the elephant who supplied the ivory has been dead for over 160 years in case of this object. Many objects are not large enough to even sample. The ivory bead sight on most sporting rifles is typically .125" in diameter and recommended sample sizes are 5mm x 5mm. (Coutu, Collins, Lee-Thorp, *Sampling of Ivory for Molecular Analysis*, Ebur website, 2009). A typical bead site is about one half the recommended sample sizes. Laser bombardment, ablation, or Raman spectroscopy techniques are the least invasive of sampling techniques. They can still leave unneeded damage and burns to surfaces and this technology is too expensive, rare and problematic in quickly determining genera without multiple tusk locations which don't exist in small worked pieces on antique arms. The Raman spectroscopic analysis which can work on micro-scale can reveal certain chemical composition of ivory **possibly** to substantiate genus but still not definitive in every situation, the Raman effect is rather weak and depends upon the use of high powered lasers as excitation sources which are not available outside university laboratories and again it is a mute point to identify genera or even family in most cases where objects are truly "antique" and in original configuration as manufactured, made or produced.

The conclusions expressed herein are based on the appraiser's best judgment and opinion.

I certify to the best of my knowledge and belief:

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- a. Statements of fact contained in this report are true and correct.
- b. The reported analyses, opinions, and conclusions are limited only by the reported critical assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- c. I have no undisclosed past, present or contemplated future interest in this property that is the subject of this report, and no personal interest with respect to the parties involved.
- d. I have performed no services as an appraiser or any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- e. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- f. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- g. My compensation for this appraisal is not contingent upon the development or reporting of a predetermined qualification or value or direction in value that favors the cause of the client, the amount of the qualification or value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal report.
- h. I have personally inspected the listed property that is subject of this report.
- i. No one provided significant professional assistance to the person signing this report.

This consultation is written in compliance with the standards of 2014 International Society of Appraisers (ISA) guidelines where they define "consultation" as the act of forming a non-monetary opinion or recommendation regarding property. Appraisal reports by definition by ISA, AAA (Appraisers Association of America), and USPAP (Uniform Standards of Professional Appraisal Practice) have exacting standards for appraisal reports which give a monetary opinion. Consultation is not covered by USPAP standards, though this report follows "writing standard 8" excluding "value" considerations which in this case are a jurisdictional exception, as ESA requires certification by accredited appraisers with no monetary value concerns.

With the exception of Steve Ardia who is my client, possession of this report or its copy does not carry with it the right of publication, nor may this report be used for any other purpose than certifying "ESA antique exemption" by anyone other than my client or authorized users without my previous written consent. If this report is reproduced, copied or otherwise used, it must be done so in the reports entirety including the cover document and all attachments.

Furthermore, no change to any item in this appraisal shall be made by anyone other than myself. Should, in conjunction with this appraisal, additional services of the appraiser be requested by the client,

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her agent or lawyer, or the courts, compensation for same shall be at the a rate arrived at by the appraiser at that time and shall be paid by the client immediately upon receipt of a statement for said work.

Digital images copied to this report are included as references only. The client is responsible for obtaining the appropriate photographs if requested by, U. S. Department Fish & Wildlife or other government agency.

This is a partial contents report. I evaluated only objects listed in this report.

**Total pages of this report, 23**

**Total Photographs in this report, 7**

**Examination Date, September 29, 2014**

**Research Dates, September 29-30, 2014**

**Effective Date of Appraisal, September 30, 2014**

**Issue Date of Appraisal, September 30, 2014**

A handwritten signature in black ink, appearing to be 'JS', with a long horizontal flourish extending to the right.

John Sexton AAA/ISA

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**COLT M-1862 POLICE PERCUSSION REVOLVER MANUFACTURED IN HARTFORD,  
CT in 1863 UTILIZING ELEPHANT IVORY (LOXODONTA AFRICANA)**

“Requirements for ESA Antique” for objects totally manufactured in the United States:

- A. This pair of cased Colts was made in 1863, well before the 100 year requirement. Serial number data readily published in numerous sources to substantiate this. This model was not made after 1873 when production ceased of model-1862 percussion Colt revolvers.
- B. Composition of firearms utilizes ESA listed endangered species “Loxodonta Africana” as grip material which is listed in section 1533, listed currently as “threatened”
- C. This pistol has no restoration to ivory or modification and is in its original manufactured state when made over 150 years ago in the United States.

**Provenance:**

Samuel Colt Firearms Manufacturing Co, Hartford, CT 1863

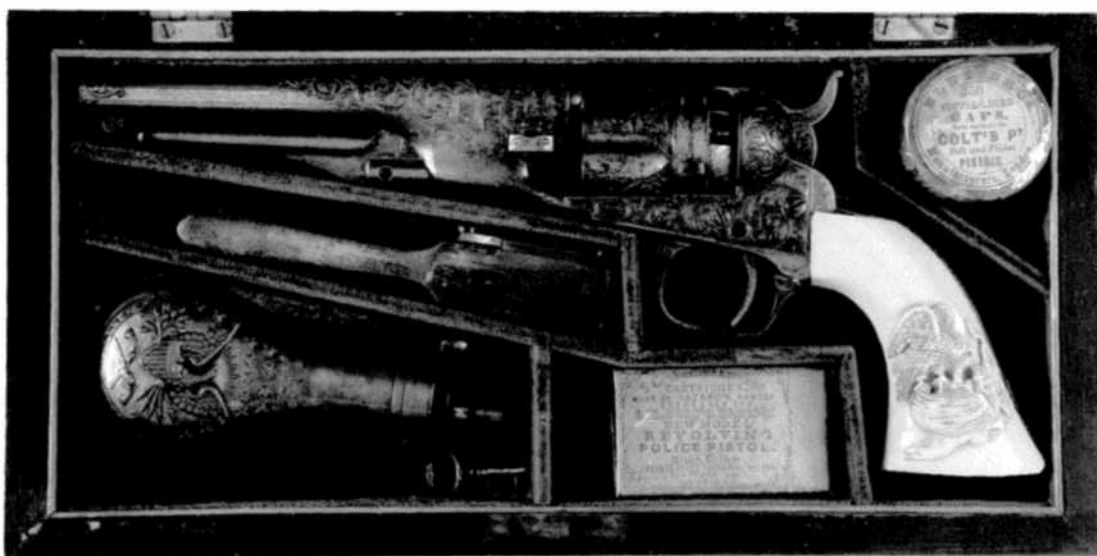
Consigned as lot 3054, James D Julia, October 9, 2014

Description of gun in James D Julia Auctions, October 9, 2014 as Lot 3054 EXTREMELY RARE CASED ENGRAVED PRESENTATION QUALITY COLT MODEL 1862 POLICE PERCUSSION REVOLVER. SN 23642. Cal. 36. Silver & gold finish with 5-1/2" bbl, brass pin front sight and 1-line New-York U.S. America address. Left side of the frame has a tiny "Colts Patent". The silver plated brass trigger guard and backstrap contain an outstanding 1-pc ivory grip, matching numbered to this revolver. Grip has a very deep relief carved eagle on a nest with two eaglets. Cyl is half fluted with five chambers and all five safety pins serviceable. All the serial numbers on bottom of revolver are accompanied by a small "P", which indicates that it was to have received special polishing for engraving & plating. Revolver is beautifully engraved by Gustave Young with full coverage foliate arabesque patterns on the frame with matching patterns 3-1/4" on each side of the bbl and around the muzzle. Top of the bbl is engraved with a long arrow pointing at the front sight. Cyl is engraved with matching patterns on the raised areas over the chambers. Backstrap, buttstrap & trigger guard have matching patterns with Mr. Young's trademark fan at the top. Hammer is also deluxe engraved with a wolfs head on each side of the nose, foliate arabesque patterns on the shank and fish scale patterns on the top edge and sides of the spur. Cyl, trigger & hammer are gold washed with all the other parts silver plated. Screws are fire blued. Accompanied by an outstanding, orig red velvet lined, Colt rosewood casing, compartmented in the bottom for the revolver, a presentation quality "Colts Patent" single sided eagle & stars silver plated flask, a silver plated "Colt's Patent" bullet mold

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with sprue cutter marked on the right side "36P", an orig tin of Eley's caps still sealed in its orig paper wrapping and a packet of five combustible cartridges. Also in the case is a silver plated, L-shaped nipple wrench, a spare hammer spring and a functioning key. This revolver was produced in 1863 at the height of the Civil War and was undoubtedly was intended as a gift or presentation to someone of great importance or a high ranking official or military officer. It apparently was so highly regarded it was never used. CONDITION: Extremely fine plus, all matching including wedge, cyl & grip. Overall retains most of its orig silver plating with about 70% dull gold on the cyl, about 80% on the hammer and 60% on the trigger; the two upper backstrap screws are slightly battered, as are two of the trigger guard screws from someone using an improper tool. Grip is outstanding with sharp edges and a wonderful mellow ivory patina. Mechanics are fine; bright shiny bore with one small spot of pitting. Case is sound with some fine grain checks in the lid and retains most of its orig varnish; lining inside the lid is heavily faded but unsoiled; bottom is moderately faded with light soil; flask retains about 60-65% thin orig silver and the mold about 98% orig silver, unused; other accessories & equipment are fine. 4-53518 JR140 (30,000-50,000)

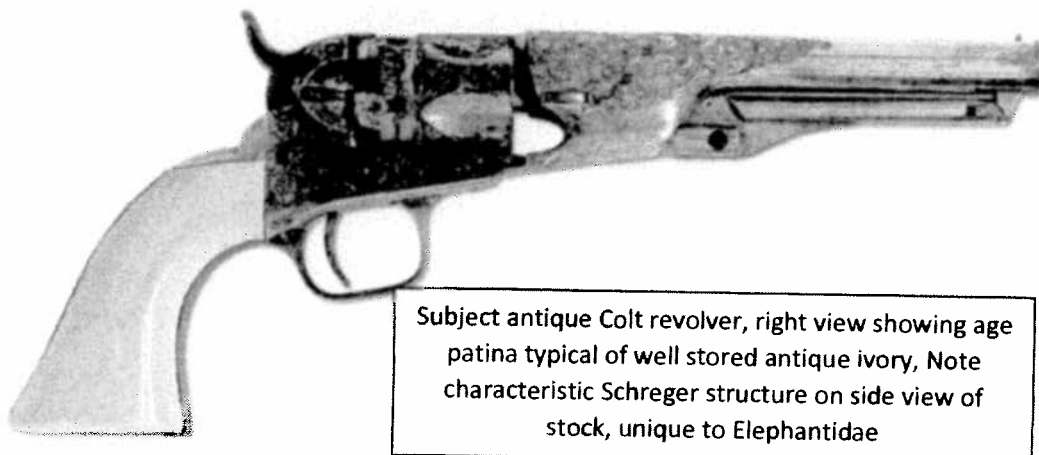


Original Colt "M-1862 Police" revolver, SN 23642, manufactured in 1863 utilizing elephant ivory as grips that are original to its manufacture, well fit with typical Colt manufacture utilizing screwed wood blocks adjoining ivory serial number in India ink internally



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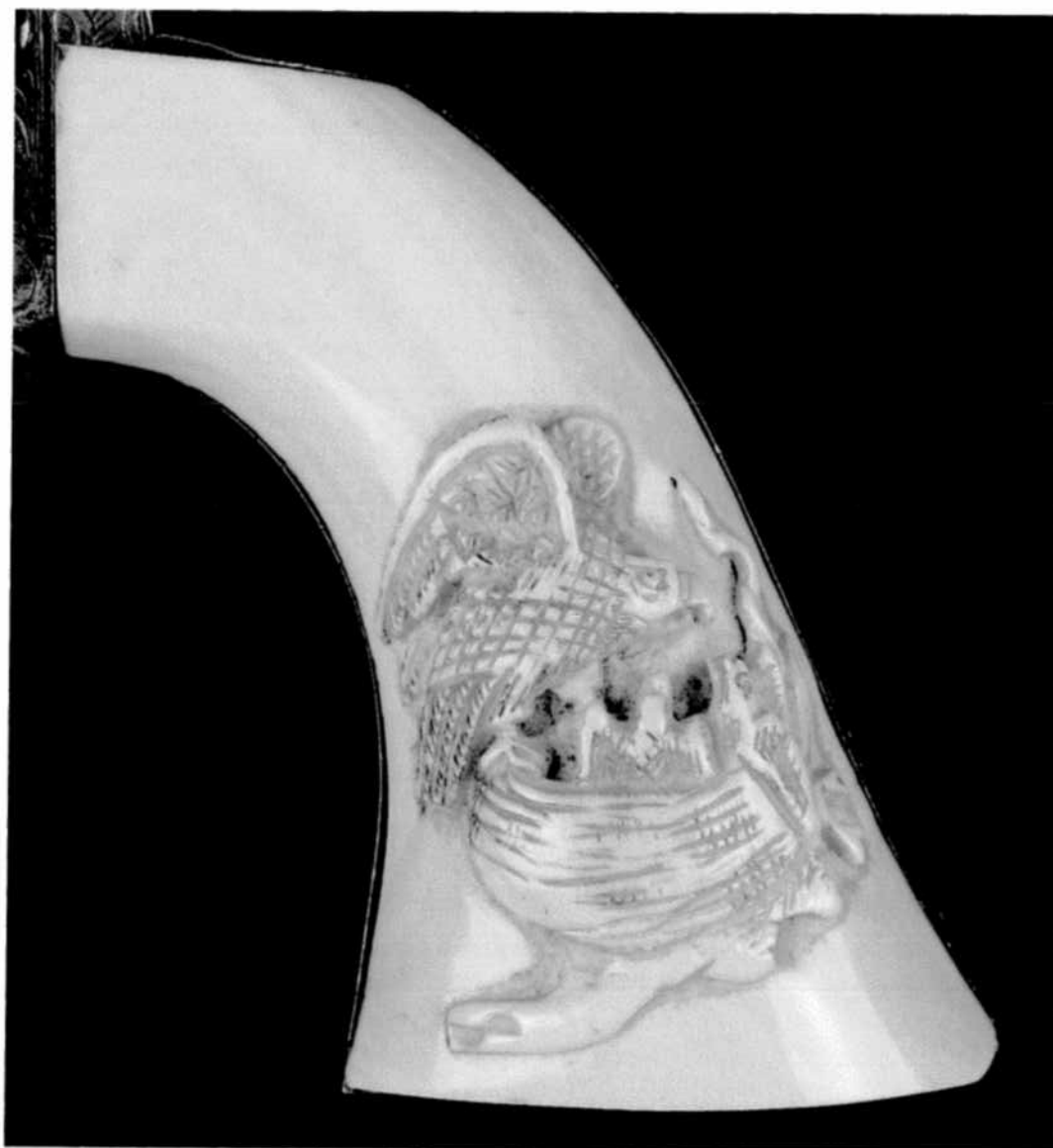
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Due to the high monetary value of this pistol, invasive sampling of ivory is not permissible to do any sort of spectrographic or chemical analysis as the need to differentiate between African and Asian ivory is a moot point as both species are CITES and ESA listed endangered or threatened species and the readily identifiable characteristics, Schreger structure and historical record of the ivory trade in mid-19th century America tend to prove the ivory here indeed is *Loxodonta Africana*

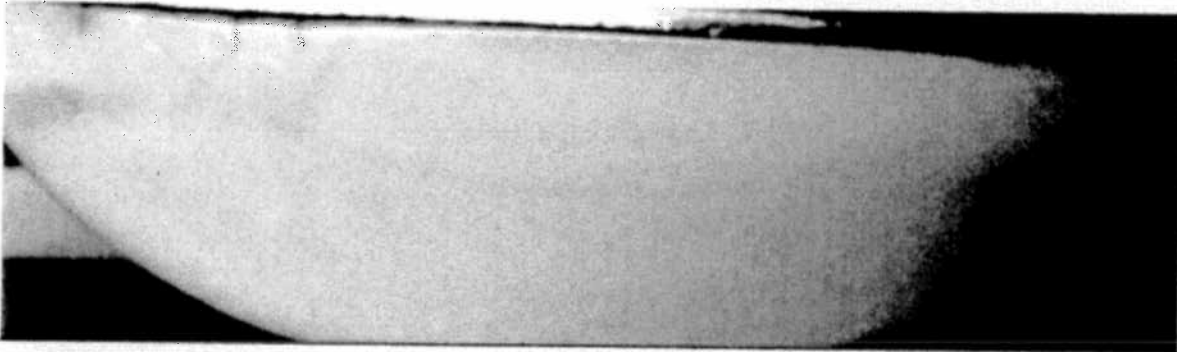
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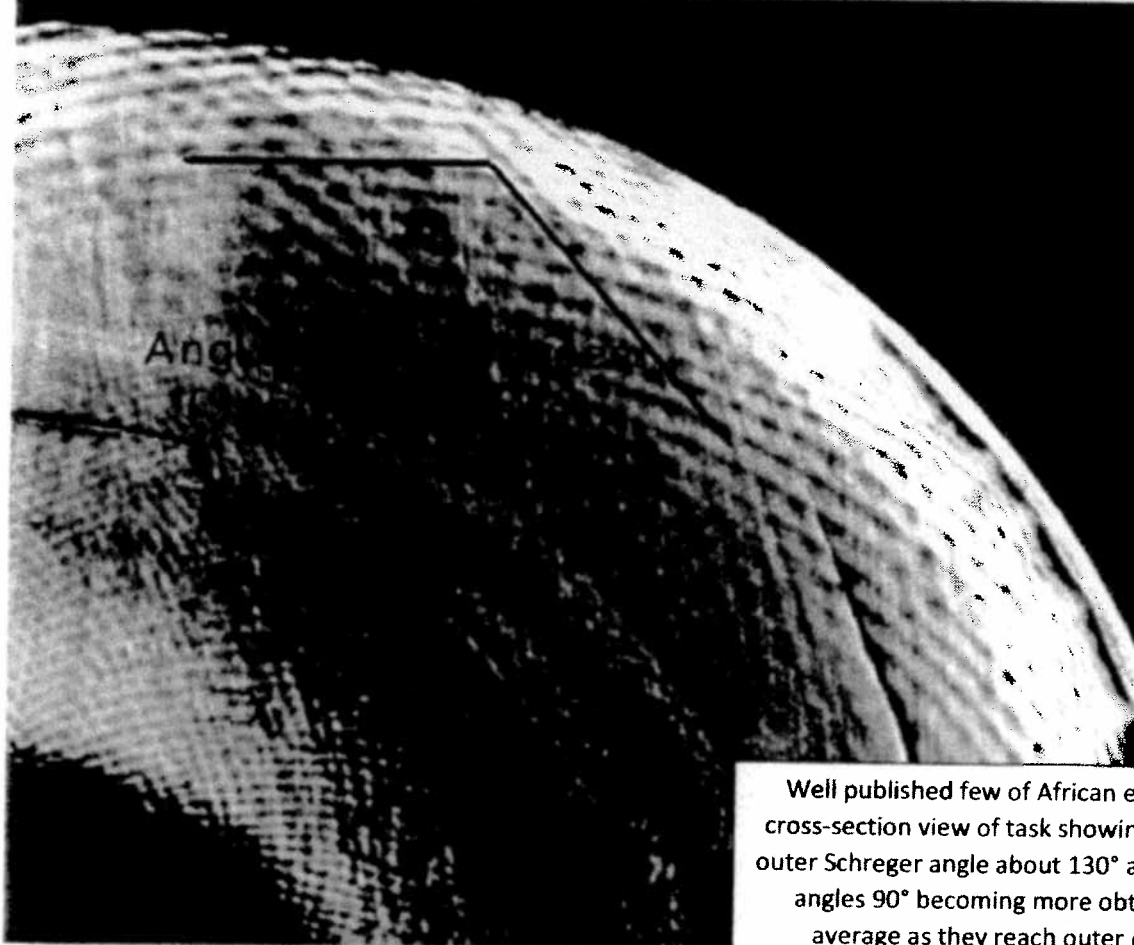


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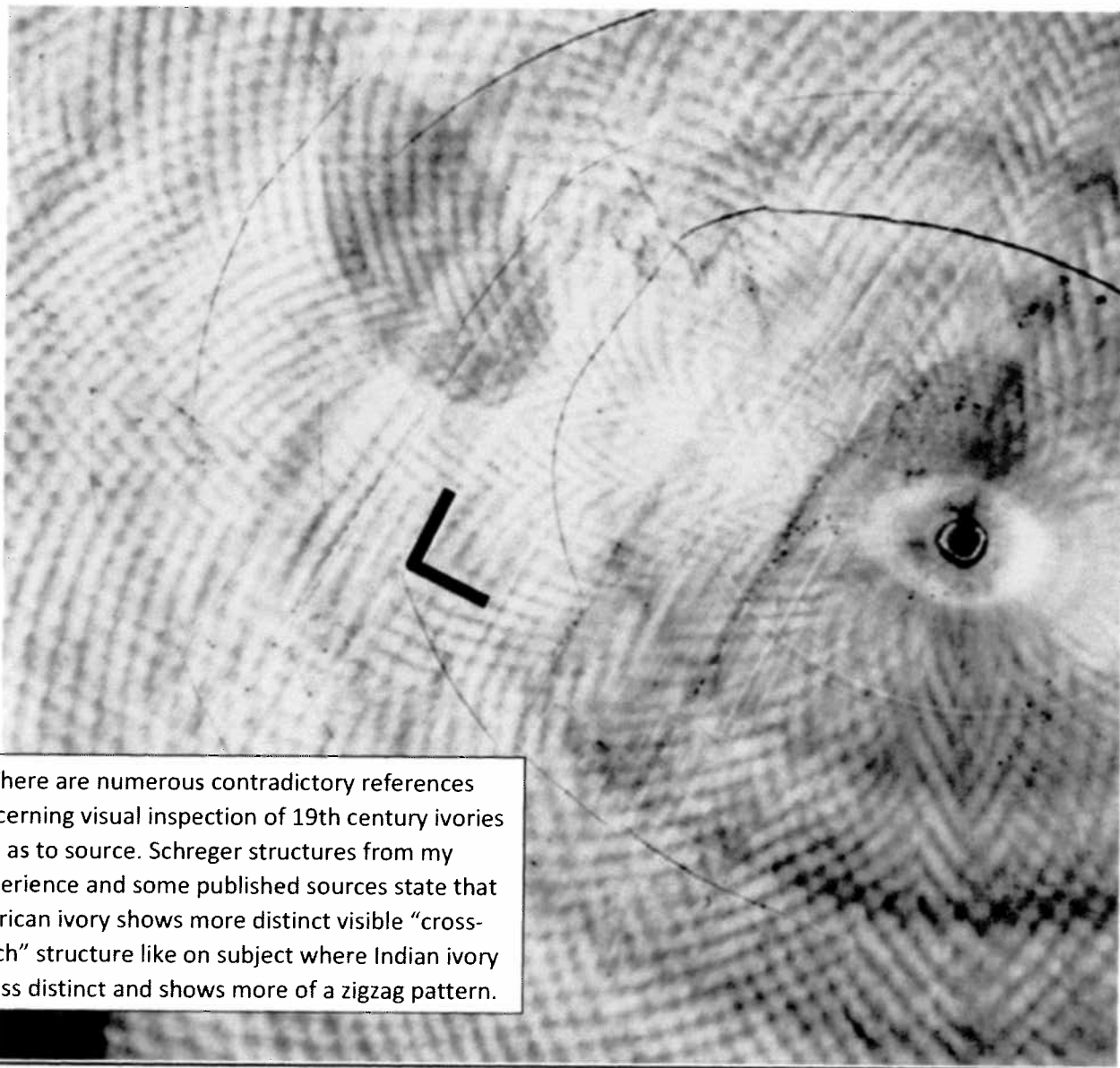
PORTION OF GRIP with added contrast to enhance Schreger structure. U.S. Department of Fish and Wildlife agents stain new ivory to bring out this structure, but antique ivory patinas are normally naturally darker in the dentine ridges that often only changing contrast when printing image. F&W recommends service agents use copiers with adjustable contrast when they are measuring angle as in structure. Angles measured from butt which appear very close to axial cross-section of tusk, closely match species of African Elephant, *Loxodonta Africana*.



Well published few of African elephant cross-section view of task showing marked outer Schreger angle about 130° and middle angles 90° becoming more obtuse on average as they reach outer edge, consistent with subject ivory stock shown

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There are numerous contradictory references concerning visual inspection of 19th century ivories as to source. Schreger structures from my experience and some published sources state that African ivory shows more distinct visible "cross-hatch" structure like on subject where Indian ivory is less distinct and shows more of a zigzag pattern.

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## **APPENDIX 1**

### **Ivory Antiques Policy Overview**

Recently in June of 2014 the United States Congress passed an amendment to the Endangered Species Act (ESA) regulations which protect endangered species such as the Asian or African elephants. It imposes a ban on the international commercial distribution of ivory goods. This impacts genuine antiques containing elephant ivory in items such as: piano keys, jewelry, gun stocks, figurines, flatware, and other heirlooms and collectables. Under this new legislation; owners, sellers, traders, and buyers must obtain the burden of proof or obtain a permit for all ivory items according to the United States Department of the Interior's Fish & Wildlife Services (FWS). Additional conservation policy amendments are ongoing though FWS has released a Q&A sheet known as Appendix A. For the most recent updates view the FWS website. Check also with your state laws and the United Nation's CITES websites.

Note that the newly passed legislation will impact the appraisal process because it adds extra layers of burden of proof when documenting the ivory artifact in accordance with the law. This determination process will decide if a permit, an exemption, or burden of proof is needed. Once the determination is made, the documentation will stay with the ivory piece permanently in order to comply with current ESA laws. Exemptions may be applied for ESA "bona fide antiques" or "ESA antiques".

#### Additional Recourses:

1. United States Department of the Interior: Fish and Wildlife Service Director's Order 210.  
Appendix A: Guidance on the Antique Exception under the Endangered Species Act (ESA).
2. CITES: The United Nation's: Convention on International Trade in Endangered Species  
<http://www.cites.org/eng>  
[http://cites.org/eng/elephant\\_poaching\\_and\\_ivory\\_smuggling\\_figures\\_for\\_2013\\_released](http://cites.org/eng/elephant_poaching_and_ivory_smuggling_figures_for_2013_released)  
(press release)
3. U.S. Fish & Wildlife Service  
[www.fws.gov](http://www.fws.gov)
4. U.S. Customs  
<http://travel.state.gov/content/passports/english/go/customs.html>

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## **APPENDIX 2**

### **United States Department of the Interior: Fish and Wildlife Service Director's Order 210, Appendix A: Guidance on the Antique Exception under the Endangered Species Act (ESA)**

The ESA Amendments of 1978 amended the 1973 Act (16 U.S.C. 1539 (h)) to allow the importation and other activities without an ESA permit of an antique article (referred to as an "ESA antique") that:

#### **ESA Director's Order 210**

##### **Sec. 2 What will Service employees do under this Order?**

**a.** Service employees must strictly implement and enforce all criteria under the ESA antique exception (16 U.S.C. 1539 (h)). The ESA requires that any person claiming the benefit of a statutory exemption has the burden of proving that the exemption is applicable (16 U.S.C. 1539 (g)) so the burden of proof is on the importer, exporter, or seller to definitively show that an item meets all of the criteria under the exception. The burden of proof standard is high to ensure that items that people claim are antiques under the ESA exception are authentic and qualify for the exception. See Appendix 1 for additional guidance (a.k.a. Director's Order 201, Appendix A, below).

#### **Director's Order 210, Appendix A Guidance on the Antique Exception under the Endangered Species Act (ESA)**

##### **1. How will the Service enforce the antique exception to the prohibitions of the ESA?**

- The ESA Amendments of 1978 amended the 1973 Act (16 U.S.C. 1539 (h)) to allow the importation and other activities without an ESA permit of an antique article (referred to as an "ESA antique") that:
  - A.** Is not less than 100 years of age;
  - B.** Is composed in whole or in part of any endangered species or threatened species listed under section 1533 of the Act;
  - C.** Has not been repaired or modified with any part of any such species on or after December 28, 1973; and
  - D.** Is entered at a port designated for the import of ESA antiques.

U.S. Customs and Border Protection (CBP) designated 13 ports for the entry of antiques made of ESA-listed species on September 22, 1982 (19 C.F.R. 12.26). The following ports are authorized: Boston, Massachusetts; New York; Baltimore, Maryland; Philadelphia, Pennsylvania; Miami, Florida; San Juan, Puerto Rico; New Orleans, Louisiana; Houston, Texas; Los Angeles, California; San Francisco, California; Anchorage, Alaska; Honolulu, Hawaii; and Chicago, Illinois.

Although the ESA includes section 1538 (c) in the introduction exception language of 16 U.S.C. 1539(h)(1), it is consistent with fulfilling our treaty obligations when a CITES specimen is at issue. An interpretation that section

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1539(h) exempts an importer or exporter from CITES pre-Convention requirements results in reading section 1539(h) as C

Congress repealing U.S. treaty obligations both with regard to the Article VII pre-Convention certificate requirement and the Articles II and VII enforcement provisions as applied to pre-Convention specimens. We are not aware of any information that would indicate that this was Congress' intent when it amended the ESA in 1978.

CITES does not allow Parties to take general reservations from Convention provisions (Article XXIII paragraph 1). We consider section 1539(h)(1)(A) requirement to present evidence of the age of the item in order to qualify for the exemption. In addition, the authority base for the Service's development of the 50 CFR part 23 regulations is section 1540(f) of the ESA. Nothing in section 1539(h)(1) excuses a person from compliance with regulations under section 1540(f) (see section 1540(a) and (b) (penalties for violations of regulations, either under section 1538(c) or "any other regulation").

- The prohibitions under 16 U.S.C. 1533(d) and 16 U.S.C. 1538 (a) and (c)i will not be enforced against items that meet elements A, B, and C above but not element D and were imported prior to September 22, 1982, or were created in the United States and never imported. Therefore, articles that meet the ESA antique exception may be sold in interstate commerce, imported, exported, and used in other ways that would otherwise be prohibited under the ESA, without an ESA permit.
- The exception requires that any person who wants to import an ESA antique must submit documentation to establish that the article meets the exception. All activities must be consistent with other applicable laws, such as import and export under the African Elephant Conservation Act, the Marine Mammal Protection Act, and the Wild Bird Conservation Act.
- The ESA also requires that any person claiming an exemption from the prohibitions of the Act has the burden of proving that the exemption is applicable (16 U.S.C. 1539 (g)).

## **2. What are the requirements to import an antique made from an ESA-listed species?**

- ESA antiques may only be imported at a port designated for the import of ESA antiques.
- The import of ESA antiques requires the importer or his/her agent to file Form 3-177, (19 C.F.R. 10.53 (e) and 50 C.F.R. 14.61) with documentation demonstrating that the item meets the ESA exception.
- For ESA antiques made from species that are also listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the importer or the importer's agent must file Form 3-177 and all required documentation directly with the Service.

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- For ESA antiques made from species that are not listed under CITES, the importer or the importer's agent may file Form 3-177 and all accompanying documentation with the U.S. Customs and Border Protection (CBP) Port Director. CBP will send all documentation to the Service as described in 19 C.F.R. 12.26(g) for a legal determination prior to release. The importer or the importer's agent may also file directly with the Service and provide the necessary clearance to CBP.
- The commercial import of ESA antiques must meet all licensing and fee requirements in 50 C.F.R. Part 14.
- The import of ESA antiques made from species that are also listed under CITES requires a pre-Convention certificate issued by the CITES Management Authority of the (re)exporting country as part of the declaration (50 C.F.R. 23.45).<sup>1</sup>
- The import of ESA antiques does not require an ESA import permit.
- The importer must provide documented evidence of species identification and age to demonstrate that the article qualifies as an ESA antique. This can include a qualified appraisal, documents that provide detailed provenance, and/or scientific testing. The Service considers this to be a high bar, particularly as it relates to the import of African elephant ivory (because the AECA moratorium prohibits the import of most African elephant ivory, including most antiques). Notarized statements or affidavits by the importer or a CITES pre-Convention certificate alone are not necessarily adequate proof that the article meets the ESA exception.

### **3. What are the requirements to export an antique made from an ESA-listed species?**

- ESA antiques may only be exported at a Service-designated port or at a port authorized under a designated port exception permit.
- The export of ESA antiques must meet all the standard declaration, license, fee, notification, and clearance requirements of 50 C.F.R. Part 14. CBP is not involved in the export of such antiques.
- The export of ESA antiques does not require an ESA export permit.
- The export of ESA antiques from species that are also listed under CITES requires a pre-Convention certificate issued by the U.S. CITES Management Authority as part of the export declaration (50 CFR 23.45)<sup>1</sup>
- The exporter must prove that the antique article meets the criteria under the ESA antique exception.

### **4. How does the U.S. importer document the identification of the species used in the ESA antique?**



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The person claiming the benefit of the ESA antique exception must definitively prove the identity of the species of which the article is composed in whole or in part. Such proof can be in the form of bona fide DNA analysis, a qualified appraisal, or other documentation that definitively demonstrates the identification of the species through a detailed provenance of the article.

**5. How does the U.S. importer document the age of the ESA antique?**

The person claiming the benefit of the ESA exception must definitively prove that the article is not less than 100 years of age. Such proof can be in the form of testing using scientifically approved aging methods by a laboratory or facility accredited to conduct such tests, a qualified appraisal, or another method that documents the age by establishing the origin of the article. The provenance may be determined through a detailed history of the article, including but not limited to family photos, ethnographic fieldwork, or other information that authenticates the article and assigns the work to a known period of time or, where possible, to a known artist.

*\*In the case of Elephant ivory here, we knew it is most likely Loxodonta Africana (African ivory) as per noted historical ivory trade in mid-19<sup>th</sup> century US NE, but in this rare case by noninvasive technique were able to measure Schreger angles in one cross-section to determine highest probability being Loxodonta.*

**6. How does the U.S. exporter or seller within the United States document that their article meets the ESA exception for antiques?**

The burden of proof is on the exporter or seller to show that the antique article meets the criteria under the ESA exception. Notarized statements or affidavits by the exporter or seller, or a CITES pre-Convention certificate alone, are not adequate proof that the article meets the ESA exception.

**7. What will the Service accept as a qualified appraisal?** An appraisal submitted as documentary evidence of an article's eligibility under the ESA antique exception must meet the following criteria:

- The person executing the appraisal either has earned an appraisal designation from a recognized professional appraiser organization for demonstrated competency in appraising the type of property being appraised, or can demonstrate verifiable education and experience in assessing the type of property being appraised.
- The person executing the appraisal is not the importer, exporter, buyer, recipient, or seller of the article; does not benefit from the results of the appraisal (other than for the cost of the appraisal); is not a party to any of the transactions associated with the article (including any person acting as an agent for the transaction); is not an employee of any business that is a party to the transaction; and is not related to the person claiming the exception.
- Facts the Service will examine in determining the reliability of the appraisal:

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- A description of the article that is detailed enough for a person who is not generally familiar with the type of article to determine that the appraisal is about the article in question.
- The name and address of the qualified appraiser, or if the appraiser is a partner, an employee, or an independent contractor engaged by a person other than the person claiming the exception, the name and address of the partnership or the person who employs or engages the appraiser.
- The qualifications of the appraiser who signs the appraisal, including the background, experience, education, and any membership in professional appraiser associations.
- The date on which the article was appraised.
- The scientific method in detail used to determine the age or species.
- Descriptive information on the article, including but not limited to: the size of the article, the medium, the artist or culture, approximate date the article was created, and a professional quality image of the article.
- A detailed history of the article, including proof of authenticity.
- The facts on which the appraisal was based including analyses of similar works by the artist on or around the creation date.

#### **8. What articles do not qualify for the antique exception under the ESA or the Service's enforcement discretion under this Guidance?**

- Articles that are less than 100 years old.
- Articles that are not composed in whole or in part of an ESA-listed species.
- Articles with repairs or modifications made on or after December 28, 1973, to the specific part or component of the article that is made of the ESA-listed species regardless of the age or origin of the parts used to repair or modify the specimen.<sup>2</sup>
- Articles that have been repaired with the addition of any part of the ESA-listed species or modified with the addition of any part of the ESA-listed species on or after December 28, 1973, regardless of the age or origin of the parts used to repair or modify the specimen.
- Articles that are, or were, imported on or after September 22, 1982, at a port that was not designated for ESA antiques.

#### **9. What other information do I need to know?**

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- The Lacey Act (16 U.S.C. 3372(d)) makes it unlawful for any person to make or submit any false record, account, label for, or any false identification of any fish, wildlife, or plant which has been, or is intended to be, (1) imported, exported, transported, sold, purchased, or received from any foreign country; or (2) transported in interstate or foreign commerce.
- Whoever knowingly and willfully falsifies, conceals, or covers up, by any trick, scheme, or device, a material fact; makes any materially false, fictitious, fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; may be subject to penalties under 18 U.S.C. 1001.

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### **APPENDIX 3**

The ESA “antique exception” (16 USC 1539 (h)) requires the following burden of proof for ivory goods.

**(g) Burden of proof**

In connection with any action alleging a violation of section 1538 of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

**(h) Certain antique articles; importation; port designation; application for return of articles**

**(1)** Sections 1533 (d) and 1538 (a) and (c) of this title do not apply to any article which—

**(A)** is not less than 100 years of age;

**(B)** is composed in whole or in part of any endangered species or threatened species listed under section 1533 of this title;

**(C)** has not been repaired or modified with any part of any such species on or after December 28, 1973; and

**(D)** is entered at a port designated under paragraph (3).

**(2)** Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

**(3)** The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

**(4)** Any person who imported, after December 27, 1973, and on or before November 10, 1978, any article described in paragraph (1) which—

**(A)** was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 1533 of this title;

**(B)** was forfeited to the United States before November 10, 1978, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 1540 of this title; and

**(C)** is in the custody of the United States on November 10, 1978;

may, before the close of the one-year period beginning on November 10, 1978, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary

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shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this chapter.

Although the ESA includes section 1538 (c) in the introductory exception language of 16 U.S.C. 1539(h)(1), it is consistent with fulfilling our treaty obligations when a CITES specimen is at issue. An interpretation that section 1539(h) exempts an importer or exporter from CITES pre-Convention requirements results in reading section 1539(h) as Congress repealing U.S. treaty obligations both with regard to the Article VII pre-Convention certificate requirement and the Articles II and VIII enforcement provisions as applied to pre-Convention specimens. We are not aware of any information that would indicate that this was Congress' intent when it amended the ESA in 1978.

CITES does not allow Parties to take general reservations from Convention provisions (Article XXIII paragraph 1). We consider section 1539(h)(1) as acknowledgement that the standard import/export document provisions of Articles III, IV, and V would not apply and the Article VII, paragraph 2 pre-Convention certificate requirement is consistent with the section 1539(h)(1)(A) requirement to present evidence of the age of the item in order to qualify for the exemption. In addition, the authority base for the Service's development of the 50 CFR part 23 regulations is section 1540(f) of the ESA. Nothing in section 1539(h)(1) excuses a person from compliance with regulations under section 1540(f) (see section 1540(a) and (b) (penalties for violations of regulations, either under section 1538(c) or "any other regulation"))

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### **BIBLIOGRAPHY**

- 1) Espinoza, E.O., Mann, M-J, LeMay, J.P., Oakes, K.A. (1990) "A method for differentiating modern from ancient proboscidean ivory in worked objects," *Current Research in the Pleistocene* 7:81-83.
- 2) Espinoza, E.O., Mann, M-J. (2000) *Identification Guide for Ivory and Ivory Substitutes*. World Wildlife Fund & Conservation Foundation Richmond, Virginia USA.
- 3) Hewitt, D. (May 2014) "Key Points and Agencies" *Maine Antique Digest*, 11-A and 12-A.
- 4) Hewitt, D. (May 2014) "The National Ivory Ban: What May Be Banned and How to Prove Antiquity" *Maine Antique Digest*, 11-A and 12-A.
- 5) Locke, M., (2013) Bone, Ivory, and Horn: Identifying Natural Materials
- 6) Trapani, J., Fisher, D.C. (2003) "Discriminating proboscidean taxa using features of the Schreger pattern in tusk dentin," *Journal of Archaeological Science* 30:429-438.
- 7) United States Department of the Interior: Fish and Wildlife Service (2014), *Director's Order 210, Appendix A, Guidance of the Antique Exception under the Endangered Species Act (ESA)* found on the world wide web on July 21, 2014 at: <http://www.fws.gov/policy/do210A1.pdf>
- 8) Virag, A. (2012) "The histology and importance of the unique structure of proboscidean ivory," *Journal of Morphology* in press.
- 9) Singh, Goyal, Khanna, Mukherjee, Sukumar (2006) *Using Morphometric and Analytical Techniques to Characterize Elephant Ivory*, Forensic Science International
- 10) *Evaluation of Raman Spectroscopy and Application of Chemometric Methods for the Differentiation of Contemporary Ivory Specimens I: Elephant and Mammalian Species*, H.G.M. Edwards, N.F.N. Hassan and N.Arya, *J.Raman Spectroscopy*, **37** pp. 353-360 (2006).

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**John Sexton**  
Qualifications as Appraiser

Partner in Stone Mountain Relics, Inc., Stone Mountain, Georgia for 23 years selling over \$25,000,000 in historical memorabilia between 1993-2002 including firearms, swords, uniforms, accoutrements, flags, and documents

Appraised historical objects with SMR, Inc. from 1993-2002 including estate appraisals of several of the largest Civil War collections ever assembled

I work as an independent appraiser and consultant in the field of Antique American Historical Property and have since 2002

Appeared as appraiser of Arms and Armor on PBS Antique Road Show, seasons 2, 3 & 4, 1998-2000

Co-author of Confederate Bowie Knives published by Man at Arms, 2012

*Accredited appraiser with the International Society of Appraisers since 2000*

*Accredited appraiser with the Appraisers Association of America since 2004*

*USPAP Compliance, current USPAP 15 hour class, AAA, NYC, August 20-21-2014*

*Current 7 hour update, ISA, Chicago, September 28, 2013*

***Lifetime Memberships In:***

Southeastern Antique Arms Collectors Association  
Pennsylvania Antique Gun Collectors Association  
Ohio Gun Collectors Association  
Texas Gun collectors Association  
Ohio Valley Military Society  
Forks of the Delaware Antique Weapons Association  
Antique Bowie Knife Association  
Colorado Gun Collectors Association