

**Standard Times Opinion Page**  
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**Submitted by James Russell, President & CEO**  
**New Bedford Whaling Museum**

A Bill is winding its way through the Massachusetts legislature to stop the importation of, and trade in, illegal ivory. If passed in its current form, the Bill could render all scrimshaw and ivory currently owned by residents of the Commonwealth valueless. Imagine a law that would reduce the value of your car to zero in an effort to stop criminals from breaking established federal laws. Far-fetched, but that is how the Bill reads. Further, it unreasonably pits art collectors against animal rights protectors, when in fact both groups should unite in common cause to eradicate this scourge.

You may have some items of scrimshaw and ivory in your home. Thousands of South Coast families do. It is the position of the Whaling Museum Board of Trustees that Bill H-1275 is inherently unfair and inequitable because it punishes individuals for historic preservation of their assets.

Any legislator who introduces a Bill designed to suppress the reprehensible practice of slaughtering wild elephants and rhino in Africa deserves praise. However one must be careful not to over-reach and throw the baby out with the bathwater. Quite aside from the constitutional issues, the underlying danger is to equate this very real and present threat to the survival of endangered species with the acts and deeds, mores and preferences of Yankee whalers who have been dead for one or two centuries, along with their prey.

In a sense, our history is running headlong into current events, current concerns and current acts of cruelty. Our cultural history is documented and given meaning by a vast array of historical objects that includes worked ivory. It would be wonderful if there were a simple, reliable test that could tell us which piece is antique and what has recently been wrongly harvested and illegally traded. Until there is, an outright ban is not the answer, as it would be akin to book-burning or worse.

The Natural Resource Defense Council states that the US is second only to China in its importation of illegal ivory. Regardless of rank, the US should be a leader in eradicating this reprehensible activity. Many states take the position that federal laws on ivory trafficking are inadequate and have major loop holes. However Massachusetts legislators must apply caution before wading into matters that are already in the Federal domain and the prerogative of the Executive branch. Our Massachusetts delegation should be asked to use its considerable influence to strengthen existing federal laws through direct action. For example, some advocate that federal support for the brave African rangers would be a good targeted step by attacking the problem at its source, while others argue that beefed up enforcement will clamp down on illegal interstate commerce.

Unfortunately marine mammal ivory is being conflated with terrestrial animal tusks. These must be separated. Scrimshaw, as defined by this museum, contains whale ivory, walrus ivory, cetacean skeletal bone, or baleen, no matter what other materials may also be involved. Documentary evidence proves that no whale was ever killed for its ivory at any time, past or present — not even one. Whale teeth and whale skeletal bone were strictly and exclusively byproducts of a commercial hunt long gone; thus, the circumstances surrounding antique scrimshaw are indeed very different from those of elephants and rhinoceros, which are genuinely endangered as a result.

The art of scrimshaw is as South Coast as cranberry sauce. An adjunct of the whale hunt, scrimshandering was neither an elitist nor academic diversion. It had its origins among blue-collar American sailors and was practiced by both the lowest and highest ranking crewmen. President John F. Kennedy collected scrimshaw. Highlights of his collection were on prominent display in the Oval Office. A favorite was a 9.5-inch whale tooth engraved with the Presidential Seal by Fairhaven artist Milton Delano. The tooth was buried with him in Arlington National Cemetery. Kennedy's interest helped elevate this American maritime art form in the public consciousness, inspiring decades of research, understanding, and exhibitions nationwide.

We are profoundly concerned by the decimation of the world's whale population. Today one of this museum's chief pursuits is to educate visitors about whale ecology, conservation and protection. But we must respect the fact that the United States owed much of its early prosperity to the whaling industry. Whaling built the City of New Bedford along with many other coastal communities. Yankee, Azorean, and Cape Verdean seaman worked shoulder to shoulder sailing bluff-bowed whaling vessels. Their bounty brought necessary foreign currency to our young Republic. It helped build schools and colleges and hospitals, churches and museums.

The moral quandaries raised by whaling were evident even before Capt. Charles Scammon published his influential book on marine mammals in 1874. We must remember that whales continued to be captured wholesale long after the Age of Sail had passed and New Bedford had retired from the chase. Curiously one could argue that New Bedford is not the "international whaling capital" because its total combined catch over three centuries was eclipsed in just 3 seasons in the 20<sup>th</sup> century, and all by foreign boats!

From a scholar's or collector's point of view, the very real consequences of Bill H-1275 would eliminate, not poachers, but entire genres of art and craft. It calls for an all-inclusive and total ban on any ivory, antique or modern. Its sweeping scale would outlaw games with ivory chess sets or antique billiard balls, old walking canes with ivory inlay, rosary beads and crucifixes with ivory inlay, pianos with ivory keys, antique miniature portraits and inlaid jewelry, sculptures with ivory decoration, scrimshaw heirlooms, old musical instruments and 18<sup>th</sup> century miniature paintings on ivory, just to mention a few categories. An all-inclusive ban is just too zealous.

Three distinct groups will be unnecessarily and unwittingly affected:

- 1) the general public who has legally purchased or come to inherit worked ivory;
- 2) “mom & pop” antique stores, art dealers and auction houses throughout the Commonwealth; and
- 3) 501C3 organizations that hold, use, or care for ivory and ivory related products in any shape or form.

The Whaling Museum will be least affected because it has strong provenance on all its pieces, and the vast majority is well over the 100 years old federal standard for defining an antique (provenance is the museum term for record of ownership of a work of art or an antique). That said, since this issue came before us two weeks ago, two substantial donations have been put on indefinite hold for fear by the donors of confiscation and fines. The wheels of commerce are already clogged and will remain so until the perceived threat is gone. This threat now hangs over hundreds of historical organizations and thousands of personal collections in the Commonwealth. This Bill will be hard to regulate and difficult to enforce. Confusion will reign as provenance is often hard to ascertain with certainty. As the saying goes, if you break it, you own it. The Commonwealth would be obliged to address, at a cost it can now ill-afford to assume, the intractable issues of authentication and adjudication.

But by then the damage is done. I received a phone call from a person of modest means who, not too long ago, paid for his son’s education by selling scrimshaw bequeathed to the family. Save the elephants but please, let’s find a way to educate the kid too.

Rather than just beating a demagogue’s drum, we urge lawmakers to find the common ground that protects an individual’s legal assets while championing a worthy cause. This series of recommendations could accomplish three outcomes: 1) maintain the intensity of the Bill’s focus on the illegal sale in the US of elephant and rhino ivory; 2) protect the legal assets of Massachusetts citizens; and 3) provide a roadmap to authenticate antique ivory. We believe these recommendations can form the basis of a discussion:

1. Work with the US Fish and Wildlife Service on an integrated approach to implement a complete ban on commercial elephant ivory trade;
2. Exempt antique ivory by age and specify approved testing procedures;
3. Include specific language that aligns with existing strong and comprehensive federal law, including the Marine Mammal Protection Act, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Lacey Act, the Endangered Species Act, and the International Dolphin Conservation Act.
4. Speed up the adoption of new federal regulations that are coalescing around the Endangered Species Act’s antique exemption based on 100 years of age.
5. Support the federal lead to close any “loopholes” between interstate and intrastate commerce.
6. The bill should restrict its language to “elephant and rhino ivory” and exempt all forms of marine ivory.
7. Consider creating an Entity charged with authentication and verification.

8. This Entity could be charged with issuing permits to credible actors.

Pursuant to all the above, the New Bedford Whaling Museum Board of Trustees submitted the above recommendations for consideration to our legislators. If this helps build a bridge to constituencies that are currently an ocean apart, they will have won a major victory—now that is a goal we can all get behind and fight for.