



Wildlife Conservation Society

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March 16, 2017

Dr. Michael S. Piwowar
Acting Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Statement on the Commission's Conflict Minerals Rule

Dear Acting Chairman Piwowar:

This letter is in response to your January 31, 2017 Statement on the Commission's Conflict Minerals Rule and request for comments.¹ The U.S. Securities and Exchange Commission's (SEC) 2012 Conflict Minerals Rule plays an important role in efforts to increase stability and rule of law in the Democratic Republic of Congo (DRC) and the surrounding region by supporting transparency in the supply chain around conflict minerals. The Wildlife Conservation Society (WCS) urges the SEC to continue to implement the Conflict Minerals Rule and to reject efforts to weaken it.

WCS saves wildlife and wild places worldwide through science, conservation action, education, and inspiring people to value nature. Founded in 1895 with the help of Teddy Roosevelt as the New York Zoological Society, today the Wildlife Conservation Society continues to be headquartered at the Bronx Zoo. To achieve our mission, WCS harnesses the power of its Global Conservation Program—in nearly 60 nations and in all the world's oceans—and its five wildlife parks in New York City, visited by 4 million people annually. WCS operates the largest and longest standing field conservation program in Africa, including over twenty five years of work in DRC, and programs in Uganda, DRC, Rwanda, Tanzania, Republic of Congo, Gabon, South Sudan, Cameroon, and Nigeria. The Wildlife Conservation Society currently sits on the U.S. Advisory Council on Wildlife Trafficking and is a conservation implementing partner of the U.S. State Department and the U.S. Agency for International Development in Africa, Afghanistan, Burma, Asia, Latin America, and global marine ecosystems.

WCS supports the SEC's 2012 Conflict Minerals Rule and the role that it plays in promoting the rule of law, increasing stability in the region, and reducing pressure on endangered wildlife. The situation on the ground in DRC and the surrounding region (i.e. the upstream supply chain) has

¹ Acting Chairman Michael S. Piwowar, *Statement on the Commission's Conflict Minerals Rule*, Jan. 31, 2017, <https://www.sec.gov/corpfin/statement-on-sec-commission-conflict-minerals-rule.html>.

improved since the issuance of the Rule and WCS strongly supports its continued implementation. WCS's comments below focus on the following topics:

- Conservation Threats Posed by Conflict Minerals and Unregulated Mining
- Improved Conditions after Dodd Frank Section 1502 and the Conflict Minerals Rule
- Need for Continued Implementation of the Conflict Minerals Rule

Conservation Threats Posed by Conflict Minerals and Unregulated Mining

The DRC contains high biodiversity and significant populations of globally threatened species, including the Grauer's gorilla, eastern chimpanzee, okapi, and forest elephant. Three areas of particular biodiversity and conservation interest within DRC are the Maiko-Tayna-Kahuzi-Biega (MTKB) landscape, the Ituri Landscape, and the Kabobo Landscape, all located in eastern DRC. These landscapes and the important natural resources and wildlife within them are threatened by unregulated mining.

The MTKB landscape is one of the most biodiverse regions in Africa. It contains more than 35 species listed as threatened on the IUCN Red List, the world's most comprehensive inventory of the global conservation status of biological species, and high numbers of species found only in that area. These include some of the last remaining populations of the endemic Grauer's gorilla (*Gorilla beringei graueri*), the eastern chimpanzee (*Pan troglodytes schweinfurthii*) and the endemic okapi (*Okapia johnstoni*). The landscape has global significance as it contains some of the largest remaining blocks of intact forest in the DRC.

The Ituri landscape, with an area of approximately 40,000 square kilometers, has one of the largest intact sections of lowland rainforest in the Congo Basin and the most intact faunal assemblage of any landscape in DRC. Within this landscape is a diverse assembly of wildlife, including 17 species of primates (the highest diversity of primates of any landscape in Africa), two species of forest pigs, ten species of forest antelope, forest buffalo, over 300 species of birds, and 500 species of butterflies. It supports about 1,200 forest elephants, the largest population in DRC, at a time when forest elephants face the threat of extinction within a decade if current poaching rates continue. Additionally, it supports 1,000 okapi and 5,000 eastern chimpanzees, which are also the largest remaining populations of those species. In addition to its rich diversity of wildlife and its importance to threatened species, this landscape is rich in plant diversity, including many valuable timber tree species and includes some of Africa's densest carbon stocks. This landscape is also noted for its high level of cultural diversity and has been home to the Mbuti and Efe communities for at least 40,000 years. Mbuti and Efe people share the landscape with a diverse mix of bantu shifting cultivators and small-scale farmer-foragers.

The Kabobo landscape on the shores of Lake Tanganyika includes the newly-created Kabobo Natural Reserve, which contains significant biodiversity, including at least 1,404 plant species, 62 mammals (including eastern chimpanzees), and 327 birds. This includes six new species of bats and frogs that have been discovered in the last decade, with new species likely still to be uncovered.

These landscapes demonstrate the high level of wildlife diversity and the important natural resources present in DRC, including for species that are threatened with extinction and only exist in the country. Unregulated mining is a significant threat to these and other landscapes in DRC

and to the people and wildlife that depend on them. Wildlife rangers trying to protect these natural resources face extreme danger as armed militias and insurgent groups inside national parks occupy vast swaths of wildlife habitat in order to illegally control and exploit access to minerals. Furthermore, as miners move into forests for potential mining sites, wildlife species face extreme pressure due to bushmeat hunting and wildlife trafficking to feed burgeoning miner's settlements.² Gorillas, in particular, are targeted for bushmeat as a protein source; the control of mining sites by armed militias facilitates the hunting of great apes in and near conflict mineral sites.³ Other related threats to great apes are habitat degradation and disease transmission from poor conditions at mining sites.⁴

Recently, WCS and partners completed a study assessing the historic and current distribution of Grauer's gorilla and eastern chimpanzee in eastern DRC.⁵ Prior to this study, the status of Grauer's gorilla had been uncertain since surveys completed by WCS between 1992 and 1995, before the start of the Congolese civil war in 1996.⁶ The results of the 2015 study showed drastic declines in Grauer's gorillas and chimpanzees over the past 20 years, with 77%-93% reductions in Grauer's gorilla populations and 22%-45% reductions in eastern chimpanzee populations. Based on this study, there are estimated to be only 3,800 Grauer's gorillas remaining in the wild.⁷ This substantial decline was attributed to illegal hunting of the Grauer's gorilla for food, especially connected to mining.⁸ In light of these findings, the species was reclassified under the IUCN Red List, moving from "Endangered" to "Critically Endangered," reflecting that it is at an "extremely high risk of extinction in the wild."⁹

Improved Conditions after Dodd Frank Section 1502 and the Conflict Minerals Rule

The Conflict Mineral Rule of 2012 requires companies to disclose annually their use of conflict minerals including tungsten, tantalum, tin (3Ts) or gold originating in the Democratic Republic of the Congo or an adjoining country if those minerals are "necessary to the functionality or production of a product." Due diligence efforts pursued in sourcing and chain of custody as well as product descriptions that are not DRC conflict free, processing facilities used, country of origin, and efforts to determine mine or location origin are then made publically available on websites for consumers to make well-informed buying decisions.¹⁰

WCS has seen an improvement in the regulation of mining in DRC since the enactment of Dodd

² Plumptre, A.J., Nixon, S., Critchlow, R., Vieilledent, G., Nishuli, R., Kirkby, A., Williamson, E.A., Hall, J.S. & Kujirakwinja, D. (2015), Status of Grauer's gorilla and chimpanzees in eastern Democratic Republic of Congo: Historical and current distribution and abundance, Unpublished report to Arcus Foundation, USAID and US Fish and Wildlife Service.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Plumptre, A., Nixon, S., Caillaud, D., Hall, J.S., Hart, J.A., Nishuli, R. & Williamson, E.A. 2016. *Gorilla beringei ssp. graueri*. (errata version published in 2016) The IUCN Red List of Threatened Species 2016: e.T39995A102328430. Downloaded on 13 March 2017; IUCN, *2001 Categories & Criteria (version 3.1)*, http://www.iucnredlist.org/static/categories_criteria_3_1#categories.

¹⁰ Conflict Minerals, 77 Fed. Reg. 56,274 (Sept. 12, 2012)

Frank Section 1502 and the Conflict Minerals Rule. Data collected by the International Peace Information Service (IPIS), an independent research institute, indicates that 585 3T mining sites out of 736 visited by IPIS and German Federal Institute for Geosciences and Natural Resources (BGR) are free of any armed presence.¹¹ Although there was an initial chilling effect on purchases of minerals from DRC and the adjoining region, over time WCS has witnessed more and more mines certified as conflict free. With the certification of minerals being sourced from conflict free mines, buyers are willing to pay higher premiums for the products that are certified and buyers are engaging in the region again. Civil society in DRC has expressed support for Dodd Frank and the Conflict Minerals Rule¹² and there is also strong bipartisan Congressional support in the United States. Furthermore, Dodd Frank has helped facilitate and leverage a number of parallel local efforts to improve and certify artisanal mines as conflict-free.¹³

Need for Continued Implementation of the Conflict Minerals Rule

The Conflict Minerals Rule plays an important role in a larger global effort to improve transparency in the supply chain surrounding conflict minerals, while also promoting the rule of law, stability, and security in the region. WCS strongly supports the Rule's role in encouraging certification of artisanal mining sites and preventing illegal mining operations in DRC's national parks. WCS has seen a wholesale improvement in the process for certifying mining in DRC since the enactment of Dodd Frank Section 1502 and the Conflict Minerals Rule, allowing U.S. companies to purchase with confidence and reducing the negative impacts of unregulated mining operations on wildlife. If this process continues, WCS believes that it will have a positive effect on national parks and the endangered species that live in them.

WCS observations also indicate that if the Conflict Mineral Rule is revoked and mining in DRC is deregulated, the region risks becoming too unstable for U.S. businesses to invest, reversing improved conditions since the enactment of the law. Additionally, there are early reports that American companies, including Apple, Intel, and Tiffany & Co., support continued implementation of the rule and will be unwilling to use conflict minerals in their products due to consumer expectations as well as their own corporate standards.¹⁴ It is important that U.S. consumers are provided publicly available information about technology purchases and that their power in the marketplace not be diminished due to less transparent corporate reporting requirements. Investors have also demonstrated support for the Conflict Minerals Rule and the role of disclosures and transparency in mineral supply chains in corporate responsibility.¹⁵

¹¹ WCS Correspondence with IPIS, March 15, 2017.

¹² See, e.g., Sasha Lezhnev & Rachel Finn, *Eight Letters from Local Civil Society Groups in Support of the U.S. Conflict Minerals Law*, Feb. 24, 2017, <http://enoughproject.org/blogs/seven-letters-congolese-groups-support-us-conflict-minerals-law>.

¹³ See, e.g. *Mineral Certification at the BGR*, BGR, http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html (last visited Mar. 15, 2017) (referring to the role of Dodd Frank in institutionalizing mineral certifications).

¹⁴ Todd C. Frankel, *Why Apple and Intel don't want to see the conflict minerals rule rolled back*, Washington Post, Feb. 23, 2017, https://www.washingtonpost.com/business/economy/why-apple-and-intel-dont-want-to-see-the-conflict-minerals-rule-rolled-back/2017/02/23/b027671e-f565-11e6-8d72-263470bf0401_story.html?utm_term=.d77ecf642f3a.

¹⁵ Letter signed by 127 investors and investor groups to Acting Chairman Piwowar (Mar. 7, 2017), <https://www.sec.gov/comments/statement-013117/c112-1618221-137060.pdf>.

Further, a repeal of the rule will have negative impacts on wildlife and rural communities in DRC. Increased arms in and around mines will likely result in a return to illegal activities that were commonly occurring pre-Conflict Mineral Rule implementation, including poaching of endangered species and other violent crimes. Efforts to prevent armed militias and criminal syndicates from operating in remote areas within national parks will prove to be more challenging under a regulatory structure that no longer calls for basic transparency and disclosure of mineral sourcing from DRC and neighboring countries.

Conclusion

WCS urges the SEC to reject any efforts to weaken the Conflict Minerals Rule. In light of humanitarian and conservation concerns outlined above, increasing consumer pressure for accountability in the downstream supply chain, and evidence that this rule and other efforts are improving conditions in DRC, the U.S. must not weaken measures that provide much-needed transparency in this supply chain. Rather, it should continue to work with U.S. businesses, DRC and adjoining countries, and other nations to improve implementation of these and other policies to ensure that conflict minerals are kept out of the supply chain.

Sincerely,



Kelly Keenan Aylward
Washington Office Director
Wildlife Conservation Society



Richard Tshombe
Country Director and Representative
WCS Democratic Republic of Congo Program