



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-IA-2021-0099; FXIA16710900000–223–FF09A30000]

RIN 1018–BG66

Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or FWS), propose to revise the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA). The intended purposes are threefold: To increase protection for African elephants in light of the recent rise in international trade of live African elephants by establishing ESA enhancement permit requirements for international trade in live elephants and specific enhancement requirements for the import of wild-sourced elephants, as well as requirements to ensure that proposed recipients of live African elephants are suitably equipped to house and care for them; to clarify the existing enhancement requirement during our evaluation of an application for a permit to import African elephant sport-hunted trophies; and to incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. We anticipate these measures will affect implementation in foreign countries of management measures that enhance African elephant conservation.

DATES: We will accept comments on the proposed rule and the draft environmental assessment received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below), must be received by 11:59 p.m. eastern time on the closing date.

Public hearing: On January 5, 2023, we will hold a virtual public hearing via ZOOM (<https://zoom.us>) from 1 p.m. to 4 p.m., Eastern Time.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the *Federal Register*. Therefore, comments should be submitted to OMB (see “Information Collection” section below under **ADDRESSES**) by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-IA-2021-0099, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment.” Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-HQ-IA-2021-0099, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

(3) *By public hearing:* Submit during the public hearing, described above under

DATES.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comments**, below, for more information).

Document availability: This proposed rule and supporting documentation, including the draft environmental assessment and economic analysis, are available on <https://www.regulations.gov> in Docket No. FWS-HQ-IA-2021-0099.

Information collection requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to Info_Coll@fws.gov; or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference “OMB Control Number 1018–African Elephant” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Mary Cogliano, Manager, Branch of Permits, Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041 (telephone (703) 358–2104). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Proposed Rule. When a species is listed as threatened, section 4(d) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), gives discretion to the Secretary of the Interior (Secretary) to issue regulations that the Secretary

deems necessary and advisable to provide for the conservation of such species. In light of the rise in international trade of live elephants, particularly of wild-sourced elephants, we have reevaluated the provisions of the regulations that were issued under section 4(d) of the ESA for the African elephant. We propose to revise the 4(d) rule (in part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.40(e)) by adopting measures that are necessary and advisable for the current conservation needs of the species, based on our evaluation of the current threats to the African elephant. This proposed 4(d) rule would remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. The proposed rule would also establish the standards used to evaluate “enhancement” under the ESA for the import of wild-sourced live African elephants under a new proposed 50 CFR 17.40(e)(10). That provision would establish an annual certification requirement for range countries that allow for export of live African elephants destined for the United States to provide the Service with information about the management and status of African elephants in their country.

This proposed rule would also clarify our evaluation of the existing enhancement requirement regarding applications for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6). That provision would establish an annual certification requirement for range countries that allow for export of sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This proposal would not change the enhancement requirement for the import of sport-hunted trophies under the current 4(d) rule but would clarify how that requirement can be met.

The proposed rule would also include incorporating the CITES National Legislation Project category designations (see 50 CFR 23.7 and <http://www.cites.org>) into the acceptance of imports under 50 CFR 17.40(e)(2), (e)(6), and (e)(10) under a new proposed 50 CFR 17.40(e)(11).

Need for Regulatory Action

We have reevaluated the provisions of the current 4(d) rule and considered other administrative actions in light of the rise in international trade of live African elephants. In addition, we have received a rulemaking petition under the Administrative Procedure Act specifically relating to the import of African elephant sport-hunted trophies. The petition is a request to initiate an expedited rulemaking to reinstate negative enhancement findings for African elephant sport-hunted trophies taken in Zimbabwe (Friends of Animals (FOA), received May 17, 2021).

We are responding to the petition and information provided with it through the proposed revisions in this document to the 4(d) rule for the African elephant.

In the petition described above, FOA requests the Service to: (1) repeal or amend the memorandum dated March 1, 2018, in which the Service withdrew certain findings for ESA-listed species taken as sport-hunted trophies; (2) reinstate the Enhancement Finding for African Elephants Taken as Sport-hunted Trophies in Zimbabwe On or After January 1, 2015 (Mar. 26, 2015); and (3) enact an immediate moratorium on the importation of African elephant sport-hunted trophies from Zimbabwe. Additional information can be found below in *Basis for Proposed Regulatory Changes*; however, in summary, the Service previously issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country basis (i.e., on a “countrywide” basis). In response to a D.C. Circuit Court opinion, *Safari Club Int’l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe and now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service’s withdrawal of the countrywide findings and implementation of the application-by-application approach in *Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020).

This proposed rule clarifies the enhancement criteria for our assessment of an application for the import of an African elephant sport-hunted trophy. Under the proposed rule, applications will continue to be evaluated on an application-by-application basis, but the clarified enhancement criteria include the requirement to obtain information on the status and management of the African elephant within the range country on an annual basis. The clarified enhancement criteria will assist the Service in ensuring that any import of an African elephant sport-hunted trophy contributes to enhancing the conservation of the species and that the import does not contribute to the decline in populations of the species.

Ultimately, under this proposed 4(d) rule, we have determined that there is a conservation need to (1) establish permitting requirements under the ESA for trade in live African elephants, enhancement standards under the ESA for the import of wild-sourced live African elephants, and requirements to ensure proposed recipients of live African elephants are suitably equipped to house and care for the elephants; (2) clarify the enhancement standards for the import of African elephant sport-hunted trophies; and (3) incorporate the CITES National Legislation Project designations into the requirements for certain imports.

We find it is appropriate for the United States to propose requirements under the ESA to ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species and that live African elephants are well cared for, so that any domestic demand for live African elephants enhances the conservation of the species and does not contribute to the decline in populations of the species in the wild. In addition, clarifying the enhancement requirement for the import of African elephant sport-hunted trophies and receiving information from the range countries will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not contribute to the decline in populations of the species. Clarifying the enhancement standards for the import of African elephant sport-hunted trophies would also increase transparency with stakeholders in the decision-making process. In order to support U.S. African elephant conservation efforts, we propose to allow

certain types of imports only from countries that have achieved a Category One designation under the CITES National Legislation Project, which is accomplished by meeting the basic requirements to implement CITES through the Party's adoption of national laws to implement the treaty.

Background

African elephants are a “keystone species” (a species on which other species in an ecosystem largely depend, such that if it were removed the ecosystem would change drastically) and have a unique role in the ecosystem. The species inhabits a wide variety of habitat types, such as savannahs, forests, deserts, and grasslands, and can migrate long distances, depending upon resource availability. African elephants modify habitat through numerous means, such as through bulk processing of plant materials, preventing the encroachment of woodlands onto grasslands, dispersing seeds, and maintaining waterways, among others. As a result of this habitat modification, the species has the potential to alter fire regimes, influence the spatial distribution of other species, and change species richness. Because of the numerous and often complex relationships between African elephants and (1) other African elephants, (2) other species on the landscape, and (3) their environment, the removal of African elephants from the wild has the potential to have large-scale ramifications on the composition and, in turn, health of the ecosystem. According to the International Union for Conservation of Nature, the principal threat to African elephants has been poaching for ivory, but increasingly, development for agriculture, coupled with associated human-elephant conflict as suitable elephant habitat is gradually reduced.

The Service has a responsibility to conserve both domestic and foreign species, and the ESA makes no distinction between foreign species and domestic species in listing species as threatened or endangered. The protections of the ESA, including section 9 and 4(d), generally apply to both listed foreign species and domestic species, and section 8 of the ESA provides authorities for international cooperation on foreign species. However, some significant

differences in the Service's authorities result in differences in our ability to affect conservation for foreign and domestic species under the ESA. The major differences are that the Service has no regulatory jurisdiction over take of a listed species in a foreign country, or of trade in listed species outside the United States by persons not subject to the jurisdiction of the United States. 50 CFR 17.21. The Service also does not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States. 50 CFR 424.12(g). The protections of the ESA through listing are likely to have their greatest conservation effect for foreign species with regard to regulating trade to, from, through, or within the United States, and other activities with foreign species in the United States.

Accordingly, we find it is necessary and advisable to propose requirements under the ESA to ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species, and that live African elephants are well cared for, so that any demand for live African elephants in the United States enhances the conservation of the species and does not contribute to the decline in populations of the species in the wild. We also evaluated our current process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We considered how our permitting process and resulting decisions could be more transparent so that applicants, the public, and stakeholders understand the requirements under the ESA. In order to clarify and improve this process, we are proposing to add new provisions to 50 CFR 17.40(e)(6) and 50 CFR 17.40(e)(10) that would establish an annual certification requirement for African elephant range countries that export sport-hunted African elephant trophies or live, wild-sourced African elephants to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will be a part of our decision-making on applications to permit the import of African elephant sport-hunted trophies or live, wild-sourced African elephants. It will enable us to ensure that authorized imports contribute to enhancing the

conservation of the species and that the imports do not contribute to the decline in populations of the species.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies or live, wild-sourced African elephants would also increase transparency with stakeholders and more efficient evaluations of applications. This proposed change to the 4(d) rule would not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. The import of any associated sport-hunted trophy into the United States would continue to be regulated and require an enhancement finding and threatened species import permit. The proposed measures are also anticipated to support development and implementation of effective management measures in foreign countries that enhance African elephant conservation.

Further, we find it necessary to ensure that we allow African elephant imports only from countries that have met the basic requirement to implement CITES under their national laws. Thus, we propose to incorporate a requirement that certain African elephant imports, including live elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies, be considered only when the country of origin and export or re-export has achieved a Category One designation under the CITES National Legislation Project. Making this proposed regulatory change would further ensure that authorized imports of African elephants are not detrimental to the survival of the species.

Regulatory Background

In the United States, the African elephant is protected under the ESA, the African Elephant Conservation Act (AfECA) (16 U.S.C. 4201 et seq.), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) (27 U.S.T. 1087), as implemented in the United States through the ESA.

Endangered Species Act. Under the ESA, species may be listed either as “endangered” or “threatened.” When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified at 50 CFR 17.21. With respect to endangered species of fish or wildlife, these include prohibitions on import; export; take within the United States, within the territorial seas of the United States, or upon the high seas; possession and other acts with unlawfully taken specimens; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce of the species and their parts and products. It is also unlawful to attempt to commit, to solicit another to commit, or to cause to be committed any such conduct. However, under certain circumstances, permits may be issued that authorize exceptions to prohibited activities.

Section 4(d) of the ESA contains two sentences. The first sentence states that the Secretary shall issue such regulations as he or she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). “Conservation” is defined in the ESA to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary [16 U.S.C. 1532(3)]. Additionally, the second sentence of section 4(d) of the ESA states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, with respect to endangered species. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the ESA was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The African elephant was listed as threatened under the ESA, effective June 11, 1978 (43 FR 20499, May 12, 1978). A review of the status of the species at that time showed that the African elephant was declining in many parts of its range and that habitat loss, illegal killing of elephants for their ivory, and inadequacy of existing regulatory mechanisms were factors contributing to the decline. At the same time the African elephant was designated as a threatened species, the Service promulgated a 4(d) rule to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978). The 1978 4(d) rule for the African elephant stated that the prohibitions at 50 CFR 17.31 applied to any African elephant, alive or dead, and to any part, product, or offspring thereof, with certain exceptions. Specifically, under the 1978 rule, the prohibition at 50 CFR 17.31 against importation did not apply to African elephant specimens that had originated in the wild in a country that was a Party to CITES if they had been exported or re-exported in accordance with Article IV of the Convention and had remained in customs control in any country not party to the Convention that

they transited enroute to the United States (at that time, the only African elephant range states that were Parties to CITES were Botswana, Ghana, Niger, Nigeria, Senegal, South Africa, and Zaire [now the Democratic Republic of the Congo].) The 1978 rule allowed for the Service to issue a special purpose permit in accordance with the provisions of 50 CFR 17.32 to authorize any activity otherwise prohibited with regard to the African elephant, upon receipt of proof that the specimens were already in the United States on June 11, 1978, or that the specimens were imported under the exception described above.

The 4(d) rule has been amended four times, in part in response to the population decline of African elephants and the increase in illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties. On September 20, 1982, the Service amended the 4(d) rule for the African elephant (47 FR 31384, July 20, 1982) to ease restrictions on domestic activities and to align its requirements more closely with provisions in CITES Resolution Conf. 3.12, *Trade in African elephant ivory*, adopted by the CITES Parties at the third meeting of the Conference of the Parties (CoP3, 1981). The 1982 rule applied only to import and export of ivory (and not other elephant specimens) and eliminated the prohibitions under the ESA against taking, possession of unlawfully taken specimens, and certain activities for the purpose of engaging in interstate and foreign commerce, including the sale and offer for sale in interstate commerce of African elephant specimens. At that time, the Service concluded that the restrictions on interstate commerce contained in the 1978 rule were unnecessary and that the most effective means of utilizing limited resources to control ivory trade was through enforcement efforts focused on imports.

The ESA 4(d) rule for the African elephant was revised on September 9, 1992 (57 FR 35473, August 10, 1992), following establishment of the 1989 moratorium under the African Elephant Conservation Act on the import of African elephant ivory into the United States, and again on June 26, 2014 (79 FR 30400, May 27, 2014), associated with an update of U.S. CITES implementing regulations. In the 2014 revision of the 4(d) rule, we removed the CITES marking

requirements for African elephant sport-hunted trophies. At the same time, these marking requirements were updated and incorporated into our CITES regulations at 50 CFR 23.74. The purpose of this regulatory change was to make clear what is required under CITES (at 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (at 50 CFR part 17).

In response to the alarming rise in poaching to fuel the growing illegal trade in ivory, the Service again revised the 4(d) rule on July 6, 2016 (81 FR 36388, June 6, 2016). The revised rule prohibited the import and export of African elephant ivory with limited exceptions for musical instruments, items that are part of a traveling exhibition, and items that are part of a household move or inheritance when specific criteria are met and ivory for law enforcement or genuine scientific purposes. The revised rule amended the exception for import of sport-hunted trophies with an enhancement finding by adding a requirement that a threatened species import permit be issued under 50 CFR 17.32. The revised rule also limited the number of sport-hunted African elephant trophies imported into the United States to two per hunter per year. Interstate and foreign commerce in African elephant ivory was prohibited except for items that qualify as ESA antiques and certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory and meet specific criteria. The revised rule also prohibited take of live African elephants in the United States to help ensure that elephants held in captivity receive an appropriate standard of care. For example, live elephants in the United States cannot be used for sport hunting. Killing or otherwise hunting an elephant in the United States would be prohibited take. The revised rule did not amend exceptions allowing for trade in live African elephants and African elephant parts and products other than ivory and sport-hunted trophies. Specifically, under the current 4(d) rule, live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity

without a threatened species permit issued under 50 CFR 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met. Under the current 4(d) rule, it is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy.

In summary, under the current provisions of the 4(d) rule, at 50 CFR 17.40(e), all of the prohibitions and exceptions in 50 CFR 17.31 (incorporating 50 CFR 17.21) and 17.32 apply to the African elephant, with certain exceptions for qualifying activities provided in 50 CFR 17.40(e)(2) through (e)(9). Other than activities that qualify for an exception, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any African elephant. In addition, it is unlawful to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) African elephants within the United States or on the high seas. It is also illegal to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any African elephant that has been taken illegally.

We note that the Service has been petitioned to reclassify the African elephant as endangered and to recognize two species of African elephants and classify them both as endangered. Review of those petitions, through a process separate from this rulemaking, is ongoing.

African Elephant Conservation Act. The AfECA was enacted in 1988 to “perpetuate healthy populations of African elephants” by regulating the import and export of certain African elephant ivory to and from the United States. Building from and supporting existing programs under CITES, the AfECA called on the Service to establish moratoria on the import of raw and worked ivory from both African elephant range countries and intermediary countries (those that

export ivory that does not originate in that country) that failed to meet certain statutory criteria. The statute also states that it does not provide authority for the Service to establish a moratorium that prohibits the import of sport-hunted trophies that meet certain standards. This limitation is specific to the AfECA and does not limit agency authority under the ESA.

In addition to authorizing establishment of the moratoria and prohibiting any import in violation of the terms of any moratorium, the AfECA prohibits: The import of raw African elephant ivory from any country that is not a range country; the import of raw or worked ivory exported from a range country in violation of that country's laws or applicable CITES programs; the import of worked ivory, other than certain personal effects, unless the exporting country has determined that the ivory was legally acquired; and the export of all raw (but not worked) African elephant ivory. While the AfECA comprehensively addresses the import of ivory into the United States, it does not address other uses of ivory or African elephant specimens other than ivory and sport-hunted trophies. The AfECA does not regulate the use of ivory within the United States and, other than the prohibition on the export of raw ivory, does not regulate export of ivory from the United States. The AfECA also does not regulate the import or export of live African elephants.

Following enactment of the AfECA (in October 1988), the Service established, on December 27, 1988, a moratorium on the import into the United States of African elephant ivory from countries that were not parties to CITES (53 FR 52242). On February 24, 1989, the Service established a second moratorium on all ivory imports into the United States from Somalia (54 FR 8008). On June 9, 1989, the Service put in place a moratorium that banned the import of ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES entered into force in 1975 and currently has 184 Parties (183 countries and 1 regional economic integration organization that have ratified the Convention), including the United States. The aim of CITES is to regulate international trade in listed animal and plant

species, including their parts and products, to ensure the trade is legal and does not threaten the survival of species. CITES regulates both commercial and noncommercial international trade through a system of permits and certificates that must be presented when leaving and entering a country with CITES specimens. Species are listed in one of three appendices, which provide different levels of protection. In some circumstances, different populations of a species are listed at different levels. Appendix I includes species that are threatened with extinction and are or may be affected by trade. The Convention states that Appendix I species must be subject to “particularly strict regulation” and trade in specimens of these species should be authorized only “in exceptional circumstances.” Appendix II includes species that are not necessarily threatened with extinction now but may become so if international trade is not regulated. Appendix III includes species that a range country has identified as being subject to regulation within its jurisdiction and as needing cooperation of other Parties in the control of international trade. Import and export of CITES species is prohibited unless accompanied by any required CITES documents. Documentation requirements vary depending on the CITES Appendix in which the species or population is included and other factors. CITES documents cannot be issued until specific biological and legal findings have been made. U.S. CITES implementing regulations are found in 50 CFR part 23. The CITES Appendices are found on the CITES website (see www.cites.org; <https://cites.org/eng/app/appendices.php>; 50 CFR 23.7, 23.91).

Ghana first listed the African elephant in CITES Appendix III on February 26, 1976. Later that year, the CITES Parties agreed to add African elephants to Appendix II, effective February 4, 1977. In October 1989, all populations of African elephants were transferred from CITES Appendix II to Appendix I (effective in January 1990), which ended much of the legal commercial trade in African elephant ivory.

In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a panel of experts (which concluded, among other things, that populations in these countries were stable or increasing and that poaching pressure was low), the CITES Parties

agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999), once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The African elephant population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. At that time, the panel of experts reviewing South Africa's proposal concluded, among other things, that South Africa's elephant population was increasing, that there were no apparent threats to the status of the population, and that the country's anti-poaching measures were "extremely effective." Since then, the CITES Parties have revised the Appendix II listing annotation.

The current annotation covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe for the exclusive purpose of allowing trade in:

- sport-hunted trophies for noncommercial purposes;
- live animals to appropriate and acceptable destinations, as defined in Resolution Conf.

11.20 (Rev. CoP18), for Botswana and Zimbabwe and for in situ conservation programs for Namibia and South Africa;

- hides;
- hair;
- trade in leather goods for commercial or noncommercial purposes for Botswana,

Namibia, and South Africa and for noncommercial purposes for Zimbabwe;

- certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and
- a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009).

These specimens can be traded under CITES as Appendix II specimens. As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I, and the trade in them is regulated accordingly.

With regard to live African elephants, as noted above, African elephants are included in CITES Appendix I, except for the annotated African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe that are included in CITES Appendix II. Live African elephants exported from Botswana and Zimbabwe under the annotation are for trade to “appropriate and acceptable destinations” as defined in Resolution Conf. 11.20 (Rev. CoP18) on *Definition of the term ‘appropriate and acceptable destinations’*, while live African elephants exported from Namibia and South Africa under the annotation are for “in situ conservation programs.” Under the annotation, all other live African elephant specimens from these four populations shall be deemed to be specimens of species included in Appendix I, and the trade in them shall be regulated accordingly. The annotation reads, in relevant part, as follows:

Populations of Botswana, Namibia, South Africa and Zimbabwe (listed in Appendix II):

For the exclusive purpose of allowing:

* * *

b) trade in live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for Botswana and Zimbabwe and for *in situ* conservation programmes for Namibia and South Africa;

* * *

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

Appendix I specimens require a CITES permit from both the exporting and importing countries. In the United States, the Service, as the U.S. Management Authority, issues Appendix I import permits if required CITES findings are made, including: That the import is not for

primarily commercial purposes (made by the Management Authority); that the import is for purposes that are not detrimental to the survival of the species (made by the Scientific Authority); and that the facility is suitably equipped to care for and house the specimens to be imported (made by the Scientific Authority). Requirements for an import permit are found at 50 CFR 23.35. With limited exceptions, an Appendix-I specimen may only be used for noncommercial purposes after import, 50 CFR 23.55. These same requirements would apply to a live African elephant specimen from the Appendix II populations if the trade does not meet the requirements of the annotation, because the specimen would be treated as an Appendix I specimen, and subject to Article III requirements.

Live elephants from Botswana and Zimbabwe traded in accordance with the annotation are traded as Appendix II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. The “appropriate and acceptable destination” finding is made by the importing country’s Scientific Authority in consultation with the exporting country. For example, elephants from Botswana or Zimbabwe imported into the United States would require prior findings by FWS under the “appropriate and acceptable destination” annotation to be regulated pursuant to the requirements of Article IV as an Appendix II specimen. Again, if the requirements of the annotation are not met, the specimen is treated as an Appendix-I specimen and subject to Article III requirements.

Live elephants from Namibia and South Africa traded in accordance with the annotation are traded as Appendix II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. Under the annotation, these live elephants may be traded only within the native range of the African elephant for “in-situ conservation programs.” Again, if the requirements of the annotation are not met, the specimen is traded as an Appendix I specimen and subject to Article

III requirements. For example, elephants from Namibia or South Africa imported into the United States are regulated pursuant to the requirements of Article III as an Appendix I specimen. Accordingly, no import of an African elephant to the United States can occur without either a prior import permit issued by FWS in accordance with Article III, or in the case of elephants originating from Zimbabwe or Botswana, if FWS has made prior findings under the “appropriate and acceptable destination” annotation.

At CITES CoP18, in discussion of the definition of “appropriate and acceptable destinations,” the Parties adopted amendments to Resolution Conf. 11.20 (Rev. CoP18) that would not allow trade in live African elephants from Botswana and Zimbabwe outside their native range under the annotation, except in an exceptional circumstance (defined in the resolution). This amendment is the subject of ongoing discussion in CITES.

The United States, as a Party to CITES, will attend the nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) in Panama City, Panama, from November 14 through November 25, 2022. We announced the provisional agenda for CoP19 and solicited public comments on the items on the provisional agenda, which are available at <https://www.regulations.gov/docket/FWS-HQ-IA-2021-0008>.

CITES National Legislation Project. In accordance with CITES Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention*, and with oversight from the CITES Standing Committee, the CITES Secretariat identifies Parties whose domestic measures do not provide them with the authority to:

- (i) Designate at least one Management Authority and one Scientific Authority,
- (ii) Prohibit trade in specimens in violation of the Convention,
- (iii) Penalize such trade, or
- (iv) Confiscate specimens illegally traded or possessed.

All four requirements must be met by the national laws of a Party in order for the Party to meet the minimum requirements to implement CITES. It is an obligation of each Party under CITES

to have national legislation in place that meets these requirements in order to engage in trade in compliance with CITES (CITES Article VIII(1), IX. See also Article II(4)). For example, in the United States, the ESA meets these requirements. The Secretariat, under the CITES National Legislation Project and in consultation with the concerned Party, analyzes national legislation for the four aforementioned requirements and designates each Party into one of three categories:

(1) Category One, defined as legislation that is believed generally to meet the requirements for implementation of CITES [all of provisions (i)–(iv) in the list above are met];

(2) Category Two, defined as legislation that is believed generally not to meet all of the requirements for the implementation of CITES [some of provisions (i)–(iv) in the list above are met]; and

(3) Category Three, defined as legislation that is believed generally not to meet the requirements for the implementation of CITES [none of provisions (i)–(iv) in the list above are met].

The Secretariat maintains a legislative status table, which is periodically revised, and includes the category in which each Party's legislation is placed and whether the Party has been identified by the Standing Committee as requiring attention as a priority. The CITES National Legislation Project designations are available with other official CITES documents on the CITES Secretariat website (see 50 CFR 23.7 and <https://cites.org/eng/legislation/parties>).

Range countries of the African elephant are currently classified as follows:

Category One: Angola, Cameroon, the Democratic Republic of the Congo, Ethiopia, Equatorial Guinea, Guinea-Bissau, Malawi, Namibia, Nigeria, Senegal, South Africa, and Zimbabwe;

Category Two: Benin, Botswana, Burkina Faso, Chad, Republic of the Congo, Eritrea, Gabon, Guinea, Kenya, Mali, Mozambique, Sudan, United Republic of Tanzania (other than Zanzibar), Togo, and Zambia; and

Category Three: The Central African Republic, Côte d'Ivoire, Eswatini, Ghana, Liberia, Niger, Rwanda, Sierra Leone, Somalia, and Uganda.

The Standing Committee has identified the following Parties that are also range countries of the African elephant as requiring priority attention for review under the National Legislation Project: Botswana, Republic of the Congo, Guinea, Kenya, Liberia, Mozambique, Rwanda, Somalia, and the United Republic of Tanzania (Zanzibar). As noted above, these categories are periodically revised as Parties enact CITES-implementing legislation, and therefore each Party in Category Two or Three can and is expected to achieve Category One. Additionally, the legislation of a Party currently placed in Category One may be subject to a revised legislative analysis at any time following relevant legislative developments, such as repealing of CITES-implementing legislation. The Secretariat reports on progress and issues are reviewed at regular meetings of the Conference of the Parties and the Standing Committee.

Basis for Proposed Regulatory Changes

Exercising the Secretary's authority under section 4(d), we have developed a proposed rule that is designed to address the African elephant's conservation needs. We find that this rule satisfies the requirement in section 4(d) of the ESA to issue regulations deemed necessary and advisable to provide for the conservation of the African elephant.

The Service recognizes that some have suggested the possibility of promulgating a ban or moratorium on the import of live African elephants, elephant sport-hunted trophies, or parts and products other than ivory and sport-hunted trophies, with no permitting exceptions. We have not pursued such an option in this proposal, and we note that there has not previously been such a ban promulgated under the ESA for African elephants or for any other ESA-listed endangered or threatened species. For example, although section 9(a)(1)(A) of the ESA and the Service's regulations in 50 CFR 17.21 prohibit import or export of any endangered wildlife, section 10(a)(1)(A) of the ESA and the Service's regulations at 50 CFR 17.22 provide exceptions by

permit when certain issuance criteria are met. We are unconvinced that a conservation case has been made for considering taking such an unprecedented step for a threatened species. As referenced above, for an endangered species, all imports and exports are prohibited, with the exception of those accompanied by section 10(a)(1)(A) permits issued for scientific purposes or to enhance the propagation or survival of the species.

In this proposal, we are not considering a ban on imports of threatened African elephants with no permitting exceptions. A ban could require institutions exhibiting African elephants to rely on captive breeding programs to replenish their stock, which could affect opportunities for genetic material exchanges. In addition, since elephants may face human-elephant conflict as a result of their impact on local agriculture, some amount of culling could continue to occur despite a ban, such that banning sport hunting could deprive range countries of revenue without necessarily affecting the number of animals removed from herds. A proposed ban of this nature would conflict with efforts to encourage positive elephant conservation efforts by range countries that are engaged in this trade and ensure that it is well-managed.

Rather, our proposed amendments to the 4(d) rule presented below are intended to continue to encourage African countries and people living with elephants to enhance their survival, and provide incentives to take meaningful actions to conserve the species and put much-needed revenue back into elephant conservation. Our proposal also ensures that we do not allow imports in circumstances where elephants are not well-managed and better ensures that any live elephants in trade and their offspring are well taken care of throughout their lifetimes.

General Provisions

We propose to revise the 4(d) rule for the African elephant in 50 CFR 17.40(e) to:

- remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17;

- establish requirements for the import of live African elephants under a new proposed 50 CFR 17.40(e)(10)(i);
- establish the standards used to evaluate “enhancement” under the ESA for the import of wild-sourced live African elephants under a new proposed 50 CFR 17.40(e)(10)(ii), including an annual certification requirement for range countries that allow for export of live African elephants destined for the United States; and
- require “suitably equipped to house and care for” findings for permitted transfers after import to ensure live elephants are going only to facilities that are suitably equipped to house and care for them.

This proposed rule would also improve and clarify our evaluation of the existing enhancement requirement during our evaluation of an application for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6) that would establish an annual certification requirement for range countries that export sport-hunted trophies to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in these countries. The proposed rule would also include incorporating the CITES National Legislation Project category designations into the acceptance of imports under current 50 CFR 17.40(e)(2) and (e)(6) and proposed paragraph (e)(10) under a new proposed paragraph (e)(11). We explain below the protections that this proposed rule would provide to African elephants. Nothing in this proposed rule would affect other legal requirements applicable to African elephants and their parts and products.

Import of Live Elephants

As noted above, we propose to establish new requirements for trade in live African elephants. Much work regarding trade in live elephants under CITES has occurred in recent years and helps to inform this proposal. At CoP17 (Johannesburg, 2016), Resolution Conf. 11.20 on *Definition of the term ‘appropriate and acceptable destinations’* was amended, clarifying the definition of “appropriate and acceptable destinations.” The new language stated

that “where the term ‘appropriate and acceptable destinations’ appears in an annotation to the listing of a species in Appendix II of the Convention with reference to the trade in live animals, this term shall be defined to mean destinations where:

(a) The Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(b) The Scientific Authorities of the State of import and the State of export are satisfied that the trade would promote *in situ* conservation.

Also, at CoP17, Decisions 17.178 to 17.180 were adopted on the implementation of the definition of the term “appropriate and acceptable destinations” and Article III, paragraphs 3(b) and 5(b), of the Convention regarding findings that recipients of living specimens of CITES Appendix I species are suitably equipped to house and care for them, with a view to developing recommendations and guidance for consideration by the Standing Committee and the 18th meeting of the Conference of Parties.

At the 30th meeting of the Animals Committee (AC30, Geneva, July 2018), the Committee developed and recommended general nonbinding guidance on factors that should be considered when evaluating whether the proposed recipient of a living specimen is suitably equipped to house and care for it, such as: Climate conditions of the recipient, space to display normal behavior, dietary needs, and social well-being of the living specimens, among others. This guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for the specimen was subsequently presented to CITES CoP18 in CoP18 Doc. 44.1 and adopted along with Decisions 18.152–18.156.

To carry out the work called for in these decisions, the Animals Committee established an intersessional working group on appropriate and acceptable destinations. The United States was a member of this working group. One mandate of the working group was to focus on preparing draft nonbinding best practice guidance on how to determine whether “the trade would promote *in situ* conservation” in line with the provisions of paragraph 2 b) of Resolution Conf.

11.20 (Rev. CoP18). Another mandate of the working group was to develop more detailed species-specific guidance on how to determine whether the proposed recipient is suitably equipped to house and care for living specimens of African elephants, building on the guidance adopted at CoP18. The Animals Committee concluded this work at the 31st Meeting of the Animals Committee, and its recommendations for guidance on these issues and suggestions for future work were discussed at the 74th meeting of the Standing Committee (SC74) and endorsed for submission to and consideration by the Nineteenth Conference of the Parties (CoP19) in November 2022 (Panama). The Standing Committee (SC) agreed to submit the following to the Nineteenth meeting of the Conference of the Parties (CoP19) in November 2022 (Panama): (1) the nonbinding best practice guidance on how to determine whether “the trade would promote in situ conservation” contained in Annex 1 to document SC74 Doc. 50 with a minor amendment to refer to both the Scientific Authority and the Management Authority throughout the guidance, and (2) the nonbinding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it, contained in Annex 2 to document SC74 Doc. 50. The Committee did not propose revisions to Resolution Conf. 11.20 (Rev. CoP18) or to any other relevant Resolution. After debating concerns raised about the export of live African elephants by Namibia and Zimbabwe, including concerns expressed by the United States, SC74 noted the concerns and invited Parties to propose to the Conference of the Parties a clear legal framework for trade in live African elephants.

In addition, SC74 agreed to propose draft decisions to CoP19 to replace Decisions 18.152 to 18.156. If adopted, the new decisions would direct an intersessional review process to invite feedback on experience with using the guidance contained in Notification to the Parties No. 2019/070 on “Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it” as well as the information provided on the CITES webpage “Appropriate and acceptable destinations.” The Secretariat would submit a

report on this feedback to the Animals Committee and the Standing Committee for their consideration and recommendations to CoP20, as appropriate.

The continued work and development of nonbinding best practice guidance on how to determine whether “the trade would promote in situ conservation” is in line with the provisions of paragraph 2 b) of Resolution Conf. 11.20 (Rev. CoP18). More detailed species-specific guidance on how to determine whether the proposed recipient of a living specimen is suitably equipped to house and care for living specimens of African elephants will aid Parties in making these complex findings, helping to maintain the scientific integrity of CITES. These guidance documents will enable CITES Parties to allocate resources more effectively and aid in providing needed examples of biological and management information.

In parallel to the efforts described above, at the 69th meeting of the Standing Committee (SC69), Burkina Faso and Niger, on behalf of several nongovernmental organizations, submitted an Information Document (SC69 Inf. 36) on challenges to CITES regulation of the international trade in live, wild-caught African elephants. The document presented a detailed analysis of information on the legal implications, biological impacts, and welfare effects of the trade in live African elephants, including case studies. It concluded that, emergencies aside, the only recipients that should be regarded as “appropriate and acceptable” for wild-caught African elephants are in situ conservation programs or secure areas in the wild within the species’ natural range. The International Union for Conservation of Nature (IUCN) Species Survival Commission African Elephant Specialist Group has opposed the removal of African elephants from the wild for any captive use for many years. This position was reaffirmed at the group’s meeting in Pretoria, South Africa, in July 2019.

The African Elephant Coalition (AEC), representing 30 countries of the African elephant range, held a summit in Addis Ababa June 1–3, 2018. Among the issues discussed concerning protecting elephants was the continued international trade of live wild elephants and the conditions under which these animals are caught and traded. The AEC reaffirmed its position

that the only “appropriate and acceptable” destinations for live wild elephants are in situ conservation programs within their wild natural range, and the AEC decided to submit a document at the 70th meeting of the Standing Committee (SC70) expressing its views and recommendations. At SC70 (Sochi, October 2018), Burkina Faso and Niger submitted SC70 Doc. 38.3 on “Definition of the term ‘appropriate and acceptable destinations’: trade in live elephants.” In part, this document recommended the Standing Committee ask that CoP18 reconsider and take decisions on the particular issues connected with trade in live wild elephants, including an option to amend Resolution Conf. 11.20 (Rev. CoP17) and include a recommendation that the only appropriate and acceptable destinations for live wild African elephants are in situ conservation programs within their wild natural range, and that the only certain way to promote in situ conservation is through in situ conservation programs within their wild natural range. The Standing Committee noted the concerns raised in document SC70 Doc. 38.3 and did not act on this particular recommendation.

The proposal was again submitted to CoP18 in CoP18 Doc. 44.2, proposing that Resolution Conf. 11.20 (Rev. CoP17) be amended to stipulate that the only “appropriate and acceptable destinations” for wild-caught live African elephants was within their natural habitat. As explained above, the “appropriate and acceptable destinations” annotation applies to elephants originating from Botswana or Zimbabwe. There was much discussion of this sensitive topic, and, after the debate, the Conference of the Parties adopted amendments to the resolution with language put forward by the European Union (EU) to allow trade outside their natural habitat under “exceptional circumstances.” This debate is summarized in the official records of the meeting at CoP18 Com. I Rec. 2; CoP18 Plen. Rec. 2 (Rev. 2); CoP18 Plen. Rec. 3 (Rev. 1). The EU explained that its suggested compromise was intended to ensure that the export of the live elephants under the annotation was conducted in a transparent and inclusive manner until the process described in Decisions 18.152–18.156 has been concluded and the issue is potentially

revisited at the next meeting of the Conference of the Parties. After a vote, CoP18 adopted the following definition:

“where the term ‘appropriate and acceptable destinations’ appears in an annotation to the listing of *Loxodonta africana* in Appendix II of the Convention with reference to the trade in live elephants¹ taken from the wild, this term shall be defined to mean in situ conservation programmes or secure areas in the wild, within the species’ natural and historical range in Africa, except in exceptional circumstances where, in consultation with the Animals Committee, through its Chair with the support of the Secretariat, and in consultation with the IUCN elephant specialist group, it is considered that a transfer to ex situ locations will provide demonstrable in situ conservation benefits for African elephants, or in the case of temporary transfers in emergency situations.”

¹Excluding elephants that were in ex situ locations at the time of the adoption of this Resolution at the 18th meeting of the Conference of the Parties.

The ambiguity of the language adopted at CoP18 has led to multiple interpretations as to its scope and effect, and to date the Parties’ implementation has not been uniform. The controversial nature of the decision also led a number of southern African range states to submit communications to the effect that they would not implement these amendments to the resolution. The United States opposed and voted against the amendments to the resolution in both Committee I and in Plenary, advocating for the process on development of guidance under Decisions 18.152–18.156 to be completed first, so that science could drive decision-making. For the international trade of live elephants under CITES, we respect decisions of the Conference of the Parties, and through this rulemaking we are proposing to improve our ability to regulate U.S. activities with live elephants for the conservation of the species, while also providing greater clarity to the public. The U.S. Government’s understanding of the process established by Resolution Conf. 11.20 (Rev. CoP18), paragraph 1, is that, under the resolution, the Animals Committee has a consultative role, meaning it is given an opportunity to advise the Parties involved (the exporting country and the importing country) on whether or not the proposed trade meets the exception. In its role, the Animals Committee does not make the decision—the Animals Committee’s advice does not allow or disallow the trade—and the Animals Committee does not need to agree with the Parties’ decision. It is for the Parties concerned to consider any

advice offered by the Animals Committee and any other relevant information that may be available to them and make their own decisions on whether or not to allow the trade.

The relevant criterion for the proposed trade under the exception is: “exceptional circumstances where . . . it is considered that a transfer to ex situ locations will provide demonstrable in situ conservation benefits for African elephants.” In the CITES context, ex situ means outside the natural range of the species, and in situ means inside the natural range of the species. Under the exception, the Parties concerned may allow the trade if they both conclude that a transfer to an ex situ location will provide demonstrable in situ conservation benefits for African elephants, and if the other relevant CITES requirements are met. The United States expects that, given the different interpretations of the CoP18 amendments to Resolution Conf. 11.20, this issue may be raised again at CoP19 in November 2022. At SC74, it was noted that concerns were raised about the export of live African elephants by both Namibia and Zimbabwe, and CITES Parties were invited to propose a clear legal framework for trade in live African elephants at CoP19.

This CITES history and activity surrounding the export and import of live African elephants from range countries underscores the need for the United States to address these issues in our proposed rulemaking, and to establish clear regulatory requirements for U.S. activities with live elephants to enhance the conservation of African elephants in all range countries.

The total number of records (instances of trade by Parties, each of which can document trade in one or more than one specimen) reported in the CITES trade database (<https://trade.cites.org/>) for live African elephants of any origin (e.g., sourced from the wild, captive-bred, or when the source was unknown) decreased from 2014 through 2019 (46 records) when compared to 2008 through 2013 (91 records). However, the instances of trade reflected in these records can cover multiple elephants, and the total number of live African elephants traded in these instances increased from 376 to 674. Seventeen were captive bred. The subset of these traded live African elephants that were exported from a range country (a country that exercises

jurisdiction over part of the natural geographic range of the African elephant) also increased from 103 to 527. The proportion of wild-sourced live elephants traded has also increased in the more recent years (from 27 percent to 78 percent). Moreover, the number of exported or re-exported wild-sourced live African elephants between any two Parties increased in the more recent years, even when excluding records for reintroduction purposes, which included upwards of 70 live elephants per record (262 versus 151). There has been an increase of approximately 51 percent in the international trade of live elephants since 2016. Although the CITES Trade Database is incomplete, contains traded elephants of an unknown source, and may double-count elephants in instances where trade occurred for the same elephant more than once within the allotted timeframe, the available trade data demonstrates that live African elephants, particularly wild-sourced elephants, are being traded in higher numbers in recent years.

The Service is also aware of a recent auction of live elephants in 2020–2021 by the Ministry of Environment Forestry and Tourism of Namibia in order to generate funds for wildlife conservation and to mitigate human–elephant conflict. The auction advertised the sale of 170 live elephants and ultimately sold 57. Fifteen of those elephants sold were moved to a private reserve in Namibia and will remain there. Thirteen elephants were sold to the United Arab Emirates; of which four are at Sharjah Safari Park, and nine elephants are at Al-Ain Zoo. At this time, 20 elephants are still to be taken from the wild, and their ultimate destination is not yet publicly known.

We propose to amend the current 4(d) rule to remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. We consider the specific elements of the elephant(s) to be imported from the applications once received. We also propose to establish the standards used to evaluate “enhancement” under the ESA for the import of wild-sourced live African elephants under 50 CFR 17.40(e)(10). Specifically, we are proposing that an enhancement determination for import of wild-sourced live African elephants

will require prior receipt of properly documented and verifiable annual certification provided by the government of the range country to the Service that:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country;

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically-based methods consistent with peer-reviewed literature;

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation;

(D) regulating governments follow the rule of law concerning African elephant conservation and management;

(E) The current viable habitat of these populations is secure and is not decreasing or degrading;

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations, and family units were kept intact to the maximum extent practicable;

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant;

(H) Funds derived from the import are applied primarily to African elephant conservation, including reporting on how those funds have been or will be used for African elephant conservation activities; and

(I) The elephants have been considered for in situ conservation programs, and consideration has been given to moving elephants to augment extant wild populations or reintroduce to extirpated ranges.

Note that the proposed rule text contains a proposed list of factors, including the reporting of funds to be spent towards conservation of the species. The Service invites public

comments on that list as well as on how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.

We note that our proposal would apply to import of live African elephants from all countries of origin, regardless of country of export or re-export and, therefore, would require import permits for African elephants from both Appendix I and Appendix II populations. The country of origin/country of export is the country where the animal is taken from the wild or bred in captivity. Under section 9(c)(2) (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exemption for the import of some threatened species. Importation of threatened species that are also listed under CITES Appendix II are presumed not to be in violation of the ESA if the importation is not made in the course of a commercial activity, all CITES requirements have been met, and all general wildlife import requirements under 50 CFR part 14 have been met. This presumption can be overcome, however, through issuance of a 4(d) rule requiring ESA authorization prior to import, which rebuts the presumptive legality of otherwise qualifying imports (see *Safari Club Int'l v. Zinke*, 878 F.3d 316, 328–29 (D.C. Cir. 2017)). For example, the Service retained the requirement for ESA enhancement findings prior to the import of sport-hunted trophies in 1997 and 2000, when the four populations of African elephants were transferred from CITES Appendix I to CITES Appendix II subject to an annotation. We amended the African elephant 4(d) rule in 2014 and 2016 and again maintained the requirement for an ESA enhancement finding prior to allowing the import of African elephant sport-hunted trophies. As the D.C. Circuit held in *Safari Club*, “[s]ection 9(c)(2) in no way constrains the Service’s section 4(d) authority to condition the importation of threatened Appendix II species on an affirmative enhancement finding. Under section 4(d) of the ESA, the Service ‘shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species’ and may ‘prohibit with respect to any threatened species any act prohibited . . . with respect to endangered species.’ 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* § 1538(a)(1)(A), it may do the

same with respect to threatened species under section 4(d), *see id.* § 1533(d).” The D.C. Circuit went on to explain that “promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [4(d) rule for African elephants].”

African elephant range states are increasingly interested in selling live African elephants as a means to reduce overpopulation of some elephants in some areas and to generate revenue. Accordingly, in order to effectively implement the ESA, the United States must have sufficient regulatory safeguards in place to ensure that the United States is not a demand country for illegal or unsustainable African elephant trade. Further, if the United States is a destination for trade in live African elephants, then we need to ensure that the trade is not only legal and sustainable, but also enhances the survival of the species in the wild, including by ensuring that revenue generated by the trade is going back into elephant conservation to address human–elephant conflict, habitat loss, poaching, and other threats to the survival of African elephants.

Our proposal to require an enhancement finding for the issuance of threatened species permits under 50 CFR 17.32 for the import and export of any live African elephant would enhance the species’ conservation and survival by allowing us to more carefully evaluate all live African elephant imports and exports consistently in accordance with legal standards and the conservation needs of the species. Additionally, the issuance of threatened species enhancement permits under 50 CFR 17.32 would mean that the standards under 50 CFR part 13 would also be in effect for imports of all elephants from all populations. Examples of such standards include the requirement that an applicant submit complete and accurate information during the application process and the ability of the Service to deny permits in situations where the applicant has been assessed a civil or criminal penalty under certain circumstances, failed to disclose material information, or made false statements. Therefore, we have determined that the

additional safeguard of requiring the issuance of threatened species enhancement permits under 50 CFR 17.32 prior to the import and export of live African elephants is warranted.

Care of live elephants after import and other permitted transfers

As explained previously, the Division of Scientific Authority (DSA) evaluates facilities importing African elephants to determine if the facility is suitably equipped to house and care for the live elephants to be imported. These “suitably equipped to house and care for” findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. Currently, the known total of live African elephants (*Loxodonta africana*) in the United States is 146. The Service does not currently regulate or maintain data on the number and location of captive-held African elephants once within the United States. All data are from a voluntary database submitted by zoos (Species360 Zoological Information Management System (ZIMS), 2021). Elephant sanctuaries and other elephant-holding institutions including zoos may exist in the United States but not participate in Species360 and are, therefore, not listed in this database. As a result, the reported number of 146 elephants is a minimum number.

These 146 elephants are located across 33 institutions. This captive population consists of 33 males and 113 females with 1 birth in the last 12 months (Species360 ZIMS, 2021). In recent years, from 2013 to 2019, the United States imported 23 live elephants (LEMIS database). The Service concludes there is a need to provide oversight of such transfers to ensure live elephants are going only to facilities that are suitably equipped to house and care for them. Such oversight would help ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild.

In addition, many of the elephants imported into the United States may not remain in the initial facility that has been determined to be suitably equipped to care for and house the animal(s). These animals and their offspring may be moved for breeding purposes, public

display, space requirements, or other reasons. Currently, once these animals have been imported, the Service does not evaluate the facilities to which they or their offspring are being moved and receives no assurance that the facilities can adequately house and care for the animals they are receiving. Additionally, in Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: Prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 and then revised at CoP18, CITES meetings that took place subsequent to our finalization of amendments to the 4(d) rule for African elephants in 2016, and present new reasons to reconsider our domestic regulation of live African elephants under the ESA.

In furtherance of these CITES recommendations and to enhance the conservation of African elephants, we propose to address these gaps in our domestic regulation of live African elephants by requiring that live African elephants may be sold or offered for sale in interstate commerce and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity only if authorized by a special purpose permit issued under 50 CFR 17.32. Entirely intrastate sale or transfer of African elephants already in the United States is regulated by State law, and in some cases subject to a permit condition and CITES use after import requirements, 50 CFR 23.55. We also propose that each permit issued by the Service for a live African elephant will include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person unless authorized by a special purpose permit issued under 50 CFR 17.32. Each special purpose permit issued for a live African elephant will require a finding that the proposed recipient is suitably equipped to house and care for the live elephant. The evaluation would consider the same criteria and requirements found in 50 CFR 23.65 and

applied during import of a live African elephant. These criteria include considering the following factors found in 50 CFR 23.65(c) in evaluating suitable housing and care for wildlife:

(1) Enclosures constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations, as appropriate, that can house the wildlife on a long-term basis if necessary.

(4) Provision of water and nutritious food of a nature and in a way that is appropriate for the species.

(5) Staff who are trained and experienced in providing proper daily care and maintenance for the species being imported or introduced from the sea, or for a closely related species.

(6) Readily available veterinary care or veterinary staff experienced with the species or a closely related species, including emergency care.

In addition to the wildlife-specific provisions in 50 CFR 23.65(c), we also consider the following general factors in evaluating suitable housing and care for a live specimen found in 50 CFR 23.65(e):

(1) Adequate enclosures or holding areas to prevent escape or unplanned exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or, alternatively, closely related species at the facility, mortalities for the previous 3 years, significant injuries to wildlife

or damage to plants, occurrence of significant disease outbreaks during the previous 3 years, and measures taken to prevent similar mortalities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or reoccurring.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

Together, these proposed permitting requirements for any person subject to the jurisdiction of the United States that engages in activities with live African elephants are necessary and advisable to provide for the conservation of the species because they would help prevent illegal and detrimental trade in live elephants; to minimize the risk of negative impacts on wild populations and avoid injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals, as recommended by the CITES Conference of the Parties. As part of our CITES findings we examine the facilities where the live elephants are proposed to be imported to address whether the facilities are suitably equipped to house and care for live elephants, and for other transfers covered under this proposal we would also examine the facilities where live elephants are proposed to be transferred. U.S. facilities that have previously been authorized to import live elephants under CITES have been in compliance with these requirements. The Service expects that any facility wishing to be transferred a live elephant would be in compliance with these standards. For any facility that is in compliance with these standards, these new permitting requirements would impose a small recordkeeping and fee burden on these facilities and would ensure that any subsequent transfer of the live elephant or its offspring from these facilities is also only to facilities that are suitably equipped to house and care for live elephants.

Import of Personally Sport-Hunted Trophies

Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human–wildlife conflict, and law enforcement efforts. The IUCN Guiding Principles on Trophy Hunting

as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) note that well-managed trophy hunting can “assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods” and, further, that well-managed trophy hunting is “often a higher value, lower impact land use than alternatives such as agriculture or tourism.” When a trophy hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic–cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. The ESA enhancement standards that we are describing in this proposed rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting. Not all trophy hunting is part of a well-managed or well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all CITES and ESA requirements are met. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import would not meet the criteria for an enhancement finding, and, consistent with both the current regulation and this proposal, cannot and would not be authorized for import into the United States. Under this proposed rule, we would continue to carefully evaluate African elephant trophy import applications in accordance with legal standards and the conservation needs of the species.

Under the current 4(d) rule for the African elephant, issuance of an ESA threatened species permit to import a sport-hunted trophy of an African elephant first requires that the Service determine that the killing of the trophy animal would enhance the survival of the species (known as an “enhancement finding”). We evaluated our current process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We reviewed information within our permit application files

related to the investment of hunting fees that go into the conservation of these species and how they improve local communities and contribute to survival and recovery of elephant populations. We also evaluated how the Service's technical assistance to elephant range countries supports local communities and contributes to sustainable elephant populations. Additionally, we considered how we could improve our permitting process and resulting decisions to ensure that they are consistent with the purpose and intent of the ESA and, as a result, that permits we issue enhance the survival of the species in the wild.

In making ESA enhancement findings, we review all relevant information available to us, including information submitted with the individual permit applications, information received in response to inquiries we make of the range country, and all other reliable information we receive from interested parties, such as species experts, hunting organizations, community groups, and nongovernmental organizations. For decades, the Service periodically issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country (or "countrywide") basis, based on the scientific and management information available to the Service. In response to a D.C. Circuit Court opinion, *Safari Club Int'l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe, Tanzania, South Africa, Botswana, Namibia, and Zambia. We now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and use of the application-by-application approach in *Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020).

The application-by-application process involves additional information requirements, time, and staff resources to complete the review of each application. We used to rely only on information concerning the national-level management of a species to produce a single enhancement finding for all permit applications specific to a species, country, and time period.

We now make enhancement findings for every individual permit application, considering not only national-level species management but also species management on a smaller scale (e.g., on a regional or concession/conservancy-area basis), as well as information about each hunter's individual circumstances, such as the specific hunting dates and locations.

Factors Considered by the Service

In our individual application reviews and enhancement assessments for range countries, we consider factors that can contribute to African elephant conservation by improving the management and status of African elephants in the wild, including:

- Establishing and using science-based sustainable quotas, including use of a sex- and age-based harvest system;
- Investing hunting fees into conservation (e.g., anti-poaching, managing human–wildlife conflict, population monitoring, community benefits that provide incentives for conservation of the species in the wild, etc.);
- Implementing and enforcing, and compliance with, wildlife laws and regulations;
- Implementing management plans and use of adaptive management;
- Implementing an effective anti-poaching program;
- Implementing measures to reduce human–wildlife conflict;
- Monitoring populations of the hunted species and their food source; and
- Protecting and improving the habitat of the hunted species (e.g., creating water holes, habitat management, etc.).

Additional Considerations

In our analysis, we consider the available information on:

- (1) Whether the range country of the hunt has regulations, infrastructure, and standard processes in place to ensure an effective transfer of hunting revenues back into conservation of the species;

(2) Whether the range country has effective governance and strong compliance and enforcement measures, particularly with regard to their ability to implement the wildlife management regulations developed for the hunted species;

(3) Whether the hunting operator is in compliance with the range country's regulatory requirements;

(4) Whether the hunting property owner, concessionaire, and/or community are effectively investing the revenue to elicit community incentives for protection of the species; and

(5) Whether the hunter is in compliance with the hunting laws, regulations, and operator requirements.

An evaluation of these factors allows the Service to assess how the range-country government manages the hunted species and how hunting serves to enhance the survival of the species in the context of the management system; how hunting serves to enhance the survival of the species in the context of the management unit at the hunting-operator, concessionaire, conservancy, or private-reserve level; and how the individual hunter has contributed (where the hunt has already taken place) or will contribute (where the hunt has not yet taken place) to enhancement of survival of that species through their hunting activities and any associated contributions to the survival of the species. Our process for making enhancement findings encourages conservation investments and sustainability of elephant populations. We evaluate not only national conservation efforts, but also how the hunting operator for the applicant's hunt works to address threats to the hunted species (e.g., making habitat improvements, conducting anti-poaching and other activities, etc.).

The Service's ESA enhancement evaluation includes an analysis of whether the revenue generated through hunting fees is used to support conservation of the species. It is the responsibility of the entity that collects the hunting fees to reinvest those funds back into conservation of the species, including addressing threats to the species that are specific to that area or elephant population. For example, if an agency of the range country's government

collects hunting fees, then we would expect the government to have standard processes and infrastructure in place to ensure an effective transfer of hunting revenues back into the country's management of the species. If a smaller management unit such as an operator, private property owner, or conservancy is responsible for collecting hunting fees, then we would expect a portion of those fees to be reinvested into conservation of the hunted species. The Service invites public comments on how to ensure an effective transfer of hunting revenues back into conservation of the species, including the kinds of regulations, infrastructure, or standard processes the range country of the hunt should have in place to ensure that hunting revenues add to and do not simply substitute for other existing funding for conservation.

When practicable, the Service conducts site visits or other outreach during which we engage with the national, provincial, and regional governments, as well as communities, to establish whether activities are achieving enhancement of the species. The Service also provides assistance to range countries to explain U.S. requirements for import of personal sport-hunted African elephant trophies and supports capacity-building in range countries. The Service's complementary approach to leveraging conservation of elephants through both its ESA regulatory permitting requirement of enhancement of the species, combined with our technical assistance to support capacity-building in range countries, effectively contributes to creating incentives for local communities to protect elephant populations and sustaining elephant populations within the range country.

By considering whether the revenues from elephant hunts are effectively reinvested in conservation programs for the species and community benefits, we are able to determine whether these targeted investments improve the survival of elephants and improve local communities that are working to conserve the species. It can be challenging to obtain the information for a robust analysis, which involves consultation with the range country and often with those involved in various aspects of the hunt, a process that requires a great deal of staff time and other resources. In sum, enhancement findings can be an effective tool for conservation, as trophy hunters are

able to help conserve elephant populations and their habitats and provide protection incentives to communities that live alongside these species by complying with our enhancement requirements.

Historically, the Service has issued enhancement findings for *Loxodonta africana* on a countrywide basis, as was the practice for a number of other threatened sport-hunted species. On March 1, 2018, however, in response to a D.C. Circuit Court opinion (*Safari Club Int'l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017)), the Service withdrew its countrywide enhancement findings for a range of species, including African elephants, across several countries, and began assessing applications to import sport-hunted trophies of these species on an application-by-application basis. These withdrawals were upheld in a D.C. Circuit Court opinion (*Friends of Animals v. Bernhardt*, No. 19-5147 (D.C. Cir. June 16, 2020); *Center for Biological Diversity v. Bernhardt*, No. 19-5152 (D.C. Cir. June 16, 2020)). No countrywide ESA enhancement findings are currently in effect. Therefore, since March 1, 2018, the Service has been making ESA enhancement findings to support permitting decisions on the import of sport-hunted trophies of African elephants on an application-by-application basis, ensuring consistent application of the regulatory criteria across all permit application adjudications and ensuring that each permit decision is based on the best scientific and management information available. As a matter of policy, the Service continues to have the option of issuing countrywide enhancement findings through a rule-making process; however, to date, the Service has not chosen this option due to the challenges of keeping the findings current in light of a lengthy rule-making process.

Annual Certification for Range Countries

To clarify and improve this process, we are proposing adding to 50 CFR 17.40(e)(6) a new provision that would establish an annual certification requirement for range countries that export sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not

contribute to the decline in populations of the species. In addition, any quotas set by range countries for sport-hunted trophies are typically established on an annual basis. Reviewing information on an annual basis will allow for monitoring of these yearly quotas and the ability to evaluate adaptive management approaches in meaningful timeframes.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies would also increase transparency with stakeholders and more efficient evaluations of applications. Although findings for the import of African elephant sport-hunted trophies will continue to be made under an application-by-application basis, application evaluations can be more efficient under the revised proposed rule because nationwide management information for the species must be provided on an annual basis by the range country. This proposed change to the 4(d) rule would not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. Additionally, the import of any associated sport-hunted trophy into the United States would continue to be regulated and require an enhancement finding and threatened species import permit. We are proposing that an enhancement determination for African elephant sport-hunted trophies under 50 CFR 17.40(e)(6)(i)(B) and 50 CFR 17.32 will require prior receipt of properly documented and verifiable certification provided by the government of the range country to the Service on an annual basis that:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain sport hunting at the level authorized by the country;

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature;

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation;

(D) Regulating governments follow the rule of law concerning African elephant conservation and management;

(E) The current viable habitat of these populations is secure and is not decreasing or degrading;

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations; and

(G) Funds derived from the involved sport hunting are applied primarily to African elephant conservation, including reporting on how those funds have been or will be utilized for African elephant conservation activities.

The Service will consider these factors as part of the determination if the import of an African elephant sport-hunted trophy meets the enhancement standard. We welcome comment on whether these factors are appropriate and whether others should be added. We note that the proposed rule text includes a reporting of funds to be spent towards conservation of the species. The Service invites public comments on that report as well as on how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.

Under the proposed 4(d) rule, we will continue to require an ESA enhancement finding and issuance of a threatened species permit for import of each African elephant sport-hunted trophy, which will continue to allow us to carefully evaluate each trophy import in accordance with legal standards and the conservation needs of the species.

Elephant Imports and the CITES National Legislation Project

The provisions of CITES and the ESA and their respective requirements for the issuance of permits for African elephants are distinct and complementary in furthering African elephant conservation. While the United States, alone, implements the ESA, CITES is implemented by the United States and other national governments. The ability of each Party to fully implement CITES underpins international efforts to conserve and enhance African elephant conservation. For U.S. African elephant conservation efforts to be successful, it is imperative that other Parties have national legislation in place that meets the basic requirements to implement CITES. We therefore propose to amend the current 4(d) rule to make each exception to the prohibition on

import in the 4(d) rule that applies to live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies, contingent on being accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (50 CFR 23.7; <http://www.cites.org>). We will thereby prohibit these imports from any Party that does not meet the basic requirements to implement CITES, and at the same time encourage CITES Parties to amend their national legislation to achieve a CITES Category One designation.

The United States is a strong proponent of the National Legislation Project, and has provided assistance to countries to help them achieve Category One. For example, in recent years the legislation of Angola and Jordan has been placed in Category One. The United States provided support to Angola and Jordan in their efforts toward these achievements. This provision is designed to have decreasing effect over time, and to ensure countries that wish to trade in African elephants with the United States enact and continue to maintain Category One national legislation as a Party to CITES. The CITES National Legislation Project is designed to encourage and assist every Party to achieve Category One designation. When each country achieves CITES Category One designation, by enacting sufficient national legislation to meet the basic requirements of CITES, as required of each Party under the Convention, then this provision will have no effect with regard to that country. For countries that have already achieved Category One, this provision will have no effect, so long as the country remains a Party to CITES and maintains Category One national legislation.

Proposed Regulatory Changes

The rule portion of this document sets forth the new regulatory provisions that we are proposing to add to 50 CFR 17.40(e). For reasons explained below, the rule text also includes some current regulatory text that we are not proposing to change. We are accepting public

comments on only the proposed new regulatory text in this document, and on paragraph (e)(2) as described in the draft environmental assessment (see the National Environmental Policy Act section below in the preamble), and not on any other current regulatory provisions in paragraph (e).

In paragraph (e)(1), which sets forth definitions used in the regulations in paragraph (e), we propose to add a definition for “range country.” We also propose to reformat the paragraph so that it follows current style requirements for the Code of Federal Regulations. As such, we are proposing to divide the current single paragraph into an indented list, and we have set forth the proposed new term and definition in alphabetic order in a list of the current terms and definitions. However, we are proposing no changes to the current terms and definitions in that paragraph.

In paragraph (e)(2), we are proposing to remove both references, which appear in the paragraph heading and the first sentence, to live African elephants because we are proposing regulatory provisions regarding live African elephants in a new paragraph (e)(10) as described below.

The primary new regulatory provisions that we are proposing, as described earlier in this document, are as follows: In a new paragraph (e)(6)(ii), we are proposing regulations pertaining to making enhancement determinations that are required by the current 4(d) rule for the importation of African elephant sport-hunted trophies. In a new paragraph (e)(10), we are proposing regulatory provisions regarding activities with live African elephants. Finally, we are proposing to incorporate the CITES National Legislation Project designations into the requirements for certain imports in a new paragraph (e)(11) and, consequently, we are proposing to add cross-references to proposed paragraph (e)(11) in paragraphs (e)(2), (e)(6)(i)(D), and (e)(10)(i).

Public Comments

We are seeking comments on the proposed rule and on the draft environmental assessment and economic analysis. While we have given careful consideration to these proposed regulatory changes, we seek comments on the impact of the proposed regulatory changes in this proposed rule on the conservation of African elephants and on the affected public. We also seek comment on the impact of not including some or all of these requirements in the rule and whether these requirements are clearly understandable. We also seek comment from the public on what viable opportunities exist for even more robust conservation of African elephants and supporting evidence that such viable opportunities will provide even more robust conservation of African elephants.

We are also particularly seeking public comments on the following specific requirements we have proposed:

- Our proposed specific enhancement requirements for the import of wild-sourced live African elephants, including the list of factors proposed to be included in a range-country certification statement, and how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.
- Our proposed specific enhancement requirements for the import of sport-hunted trophies of African elephants, including the list of factors proposed to be included in a range-country certification, and how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.
- How to ensure an effective transfer of hunting revenues back into conservation of the species, including the kinds of regulations, infrastructure, or standard processes the range country of the hunt should have in place to ensure that hunting revenues add to and do not simply substitute for other existing funding for conservation.

We seek comments concerning whether we should consider including any other prohibitions, conditions, or exceptions in our proposed paragraphs (e)(2), (e)(6)(ii), (e)(10), and (e)(11) in 50 CFR 17.40(e), pertaining to activities with live African elephants, pertaining to activities with African elephant parts and products other than ivory and sport-hunted trophies, pertaining to making enhancement determinations that will continue to be required by the 4(d) rule for the importation of African elephant sport-hunted trophies, and pertaining to limiting trade in African elephants to Parties with a CITES Category One designation under the CITES National Legislation Project.

The Service requests public comment and supporting evidence on the analysis and on the alternatives explored in this rule's draft environmental assessment and economic analysis. In addition to the preferred alternative (Alternative 2) discussed in this proposed rule, the Service has evaluated two other alternatives. Alternative 1 is the "no action" alternative and would maintain the 4(d) rule as it is currently written. Alternative 3 would revise the 4(d) rule by removing 50 CFR 17.40(e)(2), the provision in the current 4(d) rule that does not require an ESA permit under 50 CFR 17.32 for otherwise prohibited activities with live African elephants, and parts and products other than ivory and sport-hunted trophies, when the Service's regulatory requirements implementing CITES (50 CFR Part 23), general permits procedures (50 CFR Part 13), and general procedures for the importation, exportation, and transportation of wildlife (50 CFR Part 14) have been met. In addition to deletion of 50 CFR 17.40(e)(2), Alternative 3 would also limit trade in live African elephants, sport-hunted trophies, and parts and products other than ivory and sport-hunted trophies to Parties with a CITES Category One designation under the CITES National Legislation Project.

You may submit your comments and materials concerning this proposed rule by one of the methods listed under **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed under **ADDRESSES**. We will post your entire comment—including your personal identifying information—on <https://www.regulations.gov>. If you provide personal

identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. Additionally, if you provide personal identifying information in your oral comments during the public hearing, you may request at that time that we withhold this information from public review on <https://www.regulations.gov>. However, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Required Determinations

Regulatory Planning and Review: Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant. The Service has assessed the expected direction of change in benefits, costs, and transfers from this rulemaking and has evaluated alternatives in the draft environmental assessment and economic analysis (see the Federal eRulemaking Portal in **ADDRESSES**).

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

The Service has prepared a draft environmental assessment, as part of our review under the National Environmental Policy Act (NEPA), which is available for review and comment (see

the National Environmental Policy Act section below in the preamble). The proposed rule would revise the 4(d) rule that regulates trade of African elephants (*Loxodonta africana*). We propose to revise the 4(d) rule to more strictly control U.S. trade in live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. The proposed rule does not affect the regulations for African elephant ivory.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 et seq.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard for industries described in the North American Industry Classification System (NAICS). To assess the effects of the proposed rule on small entities, we focus on entities (zoos and travelling exhibits) that are equipped to care for and feed a captive-held elephant, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies, and entities that provide guide services for trophy hunting. The

industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. As shown in table 1, most businesses within these industries are small entities (U.S. Census). The following analysis is supported by the economic analysis in the draft environmental assessment.

Table 1—Potential industries affected by the proposed rule to revise the regulations under section 4(d) of the ESA for African elephants

Industry	NAICS Code	Size standards in millions of dollars	Number of businesses	Number of small businesses
Zoos and botanical gardens	712130	\$30.0	646	531
Traveling exhibits	712110	\$30.0	5,140	4,621
Furniture stores	442110	\$22.0	23,628	20,945
Luggage and leather goods stores	448320	\$30.0	988	615
Gift, novelty, and souvenir stores	453220	\$8.0	21,687	16,398
Used merchandise stores	453310	\$8.0	20,301	15,407
All other amusement and recreation industries (includes hunting guide services)	713390	\$8.0	18,405	7,629

Under the proposed rule, entities (zoos and traveling exhibits) would potentially be impacted if they import/export a live African elephant or transfer/move an African elephant after import. The draft environmental assessment and economic analysis shows that total industry imports could decrease by, at most, one shipment annually if the importer does not choose to substitute a Category One designated country.

Under the proposed rule, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies would potentially be impacted if they import their products from a non-Category One country and do not choose to substitute a Category One country. The number of businesses importing parts and products other than ivory and sport-hunted trophies is unknown. However, we know that shipments from non-Category One countries averaged 60 shipments annually from

2010 to 2019. Assuming each shipment represents one small business would result in 0.1 percent of small businesses affected (including furniture, luggage and leather goods, gifts, and used merchandise stores). Due to the niche market for these types of products, we expect a small number of small businesses to be impacted under the proposed rule. The Service is requesting data about the number of small businesses that would be impacted by the proposed rule.

Under the proposed rule, U.S. entities that provide guide services for hunting African elephants would potentially be impacted if they provide these services in a non-Category One designated country and do not choose to or cannot provide those services in a Category One designated country. The number of U.S. businesses providing guide services for hunting African elephants is unknown. Due to the niche market for this service, we expect few small businesses to be impacted under the proposed rule. The Service is requesting data about the number of small businesses that provide guide services for hunting African elephants in non-Category One designated countries and whether these businesses would incur increased costs if they change from a non-Category One designated country to a Category One designated country.

In addition to determining whether a substantial number of small entities are likely to be affected by this proposed rule, we must also determine whether the proposed rule is anticipated to have a significant economic effect on those small entities. As noted in the draft environmental assessment and economic analysis, for businesses importing/exporting live African elephants (zoos and travelling exhibits), the incremental changes of submitting an additional form (with a \$100 permit application processing fee) or a decrease of at most one shipment out of total industry imports is expected to be negligible. Therefore, the proposed rule would not have a significant economic effect on zoos and travelling exhibits. For all industries, it is possible that some importers would substitute a Category One designated country, and the impacts of the proposed rule would be reduced.

Therefore, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5

U.S.C. 601 et seq.). An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act: This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Will not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.
- c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

- a. This proposed rule would not significantly or uniquely affect small governments. A small government agency plan is not required. The proposed rule imposes no unfunded mandates. Therefore, this proposed rule would have no effect on small governments' responsibilities.
- b. This proposed rule would not produce a Federal requirement of \$100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this proposed rule does not have significant takings implications. While certain activities that were previously unregulated would now be regulated, possession would remain unregulated, except with regard to illegally taken or illegally traded specimens. A takings implication assessment is not required.

Federalism: These proposed revisions to part 17 do not contain significant federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.): This proposed rule contains new information collections requiring approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We will request OMB approval of the new reporting and recordkeeping requirements identified below:

(1) New Permit Application (Form 3-200-37h), “*Transfer/Transport/Export of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA)*” 50 CFR 17.40 – We propose a new permit application, Form 3–200–37h, which will cover activities involving the export and/or transport and/or interstate or foreign commerce of captive-held African elephants. The application form applies to both wild-sourced and captive-bred live African elephants. The information provided in the application form will be used to determine whether a permit can be issued to the applicant under the relevant Federal regulations pertaining to the requested activity.

We are also requesting OMB approval to develop this application form in the Service’s ePermits system to reduce public burden. Upon request, we will provide the public with paper-based (or PDF) versions if they do not have reliable access to the internet.

Information proposed to be collected from domestic entities (i.e., individuals, private sector, State/local/Tribal governments) is listed below, noting applicants may need to provide information from the foreign entity as part of their application submission:

- Standardized identifier information required in 50 CFR 13.12.
- Name and address where the permit is to be mailed, if different from physical address.

- Name, phone number, and e-mail of individual(s) for the Service to contact with questions.
- Whether the applicant or any of the owners of the business (if applying as a business, corporation, or institution) have been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed; been convicted, or entered a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act; forfeited collateral; or are currently under charges for any violation of the laws.
- Type of activity requested (export or interstate commerce or transport).
- The current location of the animal(s) (if different from the physical address).
- Name and physical address of the recipient of the specimen.
- For each animal involved in the export/transport, the applicant must provide the following information:
 - Scientific name (genus, species, and if applicable, subspecies);
 - Common name;
 - Approximate birth date (mm/dd/yyyy);
 - Wild or captive-born;
 - Quantity;
 - Sex (males, females, e.g., 10, 2); and
 - Permanent markings or identification (microchip #, leg band #, tattoos, studbook #, etc.).
- Information regarding source of specimen(s);
- A description and justification for the requested activity;
- Information regarding technical expertise and facilities;

- Information confirming the receiving facility meets the CITES “appropriate and acceptable destination”; and
- The transportation/shipment condition of the live animals.

(2) **Range Country Certification Requirements** – As described above, the proposed rule establishes an annual certification requirement for range countries to provide the Service with information about the management and status of African elephants and their habitat, within their country. This is not part of the application form itself, but a separate certification document/report/letter from the foreign country’s government. The foreign government may provide the certification and information directly to the Service or the applicant may provide it to the Service. The certification and information would be subject to verification by the Service. This annual certification from the range country will be kept on file and made available to the public. Without this properly documented and verifiable annual certification, the Service would be unable to issue the requested import permit. This annual certification is specifically for requests to import live, wild-sourced African elephants or African elephant sport-hunted trophies. Information to be collected from the range country for the import of live, wild-sourced elephants includes specific information on whether family units were kept intact and whether any of the animals collected are pregnant. Alternatively, information collected for the import of sport-hunted trophies includes specific information on the use of the meat of the animal.

(3) **Recordkeeping Requirements** – Records regarding details on the identification of the elephants, as well as regarding its acquisition, original source, and subsequent transfers are needed to complete the new application form. In addition, records needed include staff technical expertise and facility information for the species.

(4) **Permit Fee** – The newly proposed Form 3–200–37h will impose a new nonhour burden cost of \$100 per application. Amendments will incur a \$50 processing fee.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant’s address, telephone numbers, tax identification number, email address, and website address, if applicable. Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Respondents submit application forms periodically as needed; submission of reports is generally on an annual basis, or as identified conditionally as part of an issued permit. We examined applications in this collection, focusing on questions frequently misinterpreted or not addressed by applicants. We have made clarifications to many of our applications to make it easier for the applicant to know what information we need and to accommodate future electronic permitting. Use of these forms:

- Reduces burden on applicants.
- Improves customer service.
- Allows us to process applications and finalize reviews quickly.

A copy of the proposed Form 3–200–37h, “*Interstate Commerce of Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA)*” is available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**. Form 3–200–37h is also uploaded to the Federal eRulemaking Portal as a supporting document.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports – Requirements for African Elephants.

OMB Control Number: 1018–New.

Form Numbers: FWS Form 3–200–37h (New).

Type of Review: New.

Respondents/Affected Public: Individuals (including hunters); private sector (including biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, antique dealers, exotic pet industry, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers); State, local, Tribal, and Federal governments; and foreign governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion or annually, depending on activity.

Total Estimated Annual Nonhour Burden Cost: \$2,800 for costs associated with application processing fees, which range from \$0 to \$250. State, local, Tribal, and Federal government agencies and those acting on their behalf are exempt from processing fees.

Requirement	Average Number of Annual Respondents	Average Number of Responses Each	Average Number of Annual Responses	Average Completion Time per Response	Estimated Annual Burden Hours*
<i>Application - Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3-200-37h) 50 CFR 17.40(e) NEW</i>					
Individuals	1	1	1	6	6
Private Sector	10	1	10	6	60
Government	5	1	5	6	30
<i>ePermits Application - Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3-200-37h) 50 CFR 17.40(e) NEW</i>					
Individuals	1	1	1	5.25	5
Private Sector	10	1	10	5.25	53
Government	5	1	5	5.25	26
<i>Amendment - Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3-200-37h) 50 CFR 17.40(e) NEW</i>					
Individuals	1	1	1	4	4
Private Sector	5	1	5	4	20
Government	3	1	3	4	12
<i>ePermits Amendment - Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3-200-37h) 50 CFR 17.40(e) NEW</i>					
Individuals	1	1	1	3.5	4
Private Sector	5	1	5	3.5	18
Government	3	1	3	3.5	11
<i>Range Country Certification Requirements 50 CFR 17.40(e) NEW</i>					

Foreign Government	37	1	37	10	370
Totals:	87		87		619

*Rounded

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803; or by email to Info_Coll@fws.gov. Please reference “OMB Control Number 1018–African Elephant” in the subject line of your comments.

National Environmental Policy Act (NEPA): This proposed rule is being analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). We have prepared a draft environmental assessment to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. The draft environmental assessment is available online at <https://www.regulations.gov> at Docket Number FWS-HQ-IA-2021-0099.

Government-to-Government Relationship with Tribes: The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department’s Tribal consultation policy is not required. Individual Tribal members must meet the same regulatory requirements as other individuals who trade in African elephants, including African elephant parts and products.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, or use. This proposed rule would revise the current regulations in 50 CFR part 17 regarding trade in African elephants and African elephant parts and products. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Clarity of the Rule: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one of the methods listed under **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. In § 17.40 amend paragraph (e) by:

- a. In the introductory text, removing the reference “paragraphs (e)(2) through (9)” and adding in its place the reference “paragraphs (e)(2) through (11)”;

- b. Revising paragraphs (e)(1), (e)(2), and (e)(6)(i)(D);

- c. Redesignating paragraphs (e)(6)(ii) and (iii) as paragraphs (e)(6)(iii) and (iv) and adding a new paragraph (e)(6)(ii); and
- d. Adding paragraphs (e)(10) and (e)(11).

The revisions and additions read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) * * *

(1) *Definitions.* In this paragraph (e), the following terms have these meanings:

Antique means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)).

Ivory means any African elephant tusk and any piece of an African elephant tusk.

Range country means a country that exercises jurisdiction over part of the natural geographic range of the African elephant including the following: Angola; Benin; Botswana; Burkina Faso; Cameroon; Central African Republic; Chad; Congo, Republic of the; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Malawi; Mali; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Sierra Leone; Somalia; South Africa; South Sudan; Tanzania, United Republic of; Togo; Uganda; Zambia; and Zimbabwe.

Raw ivory means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

Worked ivory means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Parts and products other than ivory and sport-hunted trophies.* African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a

commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

* * * * *

(6) * * *

(i) * * *

(D) The requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met; and

* * * * *

(ii) To make an enhancement determination for African elephant sport-hunted trophies under paragraph (e)(6)(i)(B) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the following determinations are made:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain sport hunting at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations.

(G) Funds derived from the involved sport hunting are applied primarily to African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range state governments to produce or strengthen regional and national elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor elephant populations;

(5) Conducting elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants;

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict; and

(8) Supporting local communities by ensuring that 100 percent of the available meat from the African elephant hunt will be donated to local communities.

* * * * *

(10) *Live African elephants.* (i) Live African elephants may be imported into the United States, provided the Service determines that the activity will enhance the survival of the species, the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), the animal is accompanied by a threatened species permit issued under § 17.32, and the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

(ii) To make an enhancement determination for the import of wild-sourced live African elephants under paragraph (e)(10)(i) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the following determinations are made:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable.

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant.

(H) Funds derived from the import are applied primarily to African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of African elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range state governments to produce or strengthen regional and national African elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor African elephant populations;

(5) Conducting African elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict.

(I) The government of the range country first considers any live elephants that it approves for export for both in situ conservation programs and for transportation to other locations to augment extant wild populations or reintroduce elephants to extirpated ranges.

(iii) Live African elephants may be sold or offered for sale in interstate commerce, and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity, provided the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), and a special purpose permit is issued under § 17.32 or a captive-bred wildlife registration is issued under § 17.21(g).

(iv) Each permit issued to authorize activity with a live African elephant under 50 CFR parts 17 or 23 must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person without a special purpose permit issued under § 17.32. Each special purpose permit for a live African elephant must also include the same condition. Each special purpose permit issued for a live African elephant will require a finding by the Service that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter).

(11) *CITES National Legislation Project and African elephants.* African elephants and their parts and products may not be imported into the United States under the exceptions for import provided in § 17.32 or paragraphs (e)(2), (e)(6), or (e)(10) of this section except when all trade in the specimen has been and is accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (see § 23.7 of this chapter, <http://www.cites.org>).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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