

DRAFT Environmental Assessment: Revisions to the African elephant rule under section 4(d) of the Endangered Species Act (50 CFR 17.40(e))

Introduction

The African elephant was listed as threatened under the Endangered Species Act (ESA, Act), effective June 11, 1978 (43 FR 20499, May 12, 1978). At the same time the African elephant was designated as a threatened species, the U.S. Fish and Wildlife Service (Service) promulgated a rule under section 4(d) of the Act, to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978). In response to an alarming rise in poaching of African elephants, the Service is publishing a proposed rule to revise the African elephant 4(d) rule to provide measures that are necessary and advisable for the current conservation needs of the species and to prohibit certain acts prohibited in section 9(a)(1) of the ESA.

This draft Environmental Assessment (EA) analyzes the environmental impacts of the “no action” alternative (maintaining the 4(d) rule as it is currently written), of the Service’s preferred alternative (revision of the 4(d) rule for the African elephant), and of having no 4(d) rule in place (removing the 4(d) rule from our regulations). We seek input from the public on this document and will consider comments received during the public comment period before making a final selection from among the alternatives.

When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified in 50 CFR 17.21. These include prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; sale and offer for sale in interstate or foreign commerce; and delivery,

receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity.

The ESA does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the ESA the Secretary of the Interior is given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation for any threatened species any act prohibited under section 9(a)(1) of the ESA for endangered species. The Service has developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) that apply to most threatened species. Prohibitions in 50 CFR 17.31 include: take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; possession and other acts with unlawfully taken wildlife; sale and offer for sale in interstate or foreign commerce; and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity. Permits issued under 50 CFR 17.32 must be for “scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act.”

Under section 4(d) of the ESA, the Service may also develop prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues a rule that may include some of the prohibitions and authorizations set out in 50 CFR 17.31 and 17.32, but that also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32.

In addition to the ESA, Federal protection is provided to the African elephant under the African Elephant Conservation Act (AfECA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Director's Order No. 210, issued by the Director of the U.S. Fish and Wildlife Service in February 2014, established policy and procedures for the Service to follow with regard to the import moratorium under the AfECA (in place since 1989) and the exemption for antiques under the ESA.

CITES is an international agreement among governments that provides a framework for regulating international trade in listed animals and plants, including their parts and products, to ensure the trade is legal and does not threaten the survival of the 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. The African elephant has been listed under CITES since 1976. CITES documents are required for import and export of African elephants and African elephant parts and products.

The AfECA, enacted by Congress in 1988 to “perpetuate healthy populations of African elephant,” regulates the import of certain African elephant ivory into the United States and the export of raw ivory from the United States. The AfECA calls on the Service to establish moratoria on the import of African elephant ivory from both African elephant range countries and intermediary countries (those that export ivory that originates elsewhere) that fail to meet certain criteria. On June 9, 1989, in accordance with the AfECA requirements, the Service established a moratorium, which remains in place today, banning the import of African elephant ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

The AfECA does not regulate African elephant specimens other than ivory and sport-hunted trophies. It does not regulate the use of ivory within the United States and, other than the prohibition on export of raw ivory, does not regulate export of ivory from the United States.

Director's Order No. 210, first issued on February 25, 2014, and revised on May 15, 2014, reaffirms the moratorium under the AfECA on import of African elephant ivory, while providing, as a matter of law enforcement discretion, for the import of certain ivory specimens when specific conditions are met. The Director's Order provides for the following: raw or worked African elephant ivory may be imported for genuine scientific purposes that will contribute to the conservation of the species and by a government agency for law enforcement purposes; worked ivory may be imported for noncommercial use as part of a household move or inheritance, as part of a musical instrument, or as part of a travelling exhibition, provided the ivory was acquired prior to February 26, 1976, it has not been transferred from one person to another for financial gain or profit since February 25, 2014, and it is accompanied by a specified valid CITES document. (For details, see Director's Order No. 210.)

In developing and evaluating alternatives to address the current conservation needs of the African elephant, we have taken into account provisions in place for African elephants under the ESA, CITES, the AfECA, and Director's Order No. 210. Provisions for African elephants under CITES and the AfECA can help to address current threats to the species, but the ESA can reach activities that are not regulated under these other laws. Under our preferred alternative, we have, where possible, harmonized provisions in the 4(d) rule with these other measures to make it easier to understand and comply with U.S. requirements for trade in African elephant specimens.

Purpose and need for the action

At the time the African elephant was classified as threatened under the ESA, the Service determined the need to develop a rule under section 4(d) of the ESA, to specify prohibitions and authorizations tailored to the specific conservation needs of the African elephant and to provide benefits to both elephants and people that would not be readily available under the standard ESA regulatory provisions for threatened species. The 4(d) rule for the African elephant has been amended twice in response to changes in the status of African elephants and the illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties; on July 20, 1982 (47 FR 31384) and again on August 10, 1992 (57 FR 35473). On June 26, 2014 (79 FR 30400), associated with the update of U.S. CITES implementing regulations, we made technical revisions to the 4(d) rule to clarify what is required under CITES (in 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (in 50 CFR part 17).

The provisions of the current 4(d) rule (50 CFR 17.40(e)) were put in place in 1992, following the establishment of the 1989 moratorium on the import into the United States of African elephant ivory under the AfECA (54 FR 24758, June 9, 1989). The 4(d) rule regulates certain import and export of African elephants (including African elephant parts and products); possession, sale, offer for sale, transport, and similar activities with any African elephant specimen illegally imported into the United States; and sale or offer for sale of any sport-hunted trophy imported into the United States in violation of a permit condition. It does not contain provisions for regulation of interstate commerce in legally imported African elephant specimens, nor does it address foreign commerce or take of live animals.

In recent years, the illegal killing of elephants and the illegal trade in elephant ivory has risen to unprecedented levels, fueled by skyrocketing global demand for elephant ivory. Opportunistic poaching has been replaced by coordinated slaughter commissioned by organized

networks or syndicates. Experts, including the CITES Secretariat, TRAFFIC, IUCN and others, have concluded that elephants are facing the most serious conservation crisis since 1989, when the African elephant was transferred from CITES Appendix II to Appendix I. Although the primary markets are in Asia, there is evidence that the United States continues to play a role as a destination and transit country for illegally traded elephant ivory. We are concerned that the legal market for African elephant ivory in the United States is providing an opportunity for illegal ivory to be laundered through U.S. markets. Service wildlife inspectors stationed at major U.S. ports intercept smuggled wildlife and ensure that wildlife importers and exporters comply with declaration, permit, and other requirements for international trade in elephants and other wildlife. Seizures of unlawfully imported and exported elephant specimens at U.S. ports have ranged from whole elephant tusks and large ivory carvings to knife handles, jewelry made from ivory or hair, and tourist souvenirs including items made from elephant feet and bones. Service special agents have investigated multiple smuggling operations involving the trafficking of elephant ivory for U.S. markets. These investigations have involved both smuggling of ivory into the United States from Africa and elsewhere and smuggling of elephant ivory out of the United States to other markets, particularly in Asia. (For more information on the U.S. role, see the section in the preamble to the proposed rule on *U.S. involvement in the illegal ivory trade*.) To benefit conservation of the African elephant, we believe it is necessary to improve our controls over U.S. trade in African elephant ivory.

Currently, the primary threat to the survival of the African elephant is poaching for ivory. We are proposing to revise the 4(d) rule for the African elephant (50 CFR 17.40(e)) as necessary and advisable for the conservation of the species and to include certain prohibitions from section 9(a)(1) of the ESA, to more strictly regulate U.S. trade in ivory. The proposed revisions would

regulate import, export, and commercial use of African elephant ivory and sport-hunted African elephant trophies and protect live elephants within the United States. At the same time, we propose to allow limited exceptions for items and activities that we do not believe, based on all available evidence, are contributing to the poaching of elephants in Africa, including trade in live animals, parts and products other than ivory, and certain manufactured items that contain small amounts of ivory and meet specific criteria.

This proposed action would facilitate enforcement efforts within the United States and improve regulation of both domestic and foreign trade in elephant ivory by individuals subject to U.S. jurisdiction. We believe that these improved controls on ivory trade will help ensure that U.S. markets are not contributing to the global illegal ivory trade, which will contribute to a reduction in poaching of African elephants.

This proposed action is consistent with Executive Order 13648 on Combating Wildlife Trafficking, signed by President Obama on July 1, 2013, to “address the significant effects of wildlife trafficking on the national interests of the United States.” The Executive Order calls on executive departments and agencies to take all appropriate actions within their authority to “enhance domestic efforts to combat wildlife trafficking, to assist foreign nations in building capacity to combat wildlife trafficking, and to assist in combating transnational organized crime.” Increased control of the U.S. market for elephant ivory is also among the administrative actions called for in the National Strategy for Combating Wildlife Trafficking, issued by President Obama on February 11, 2014.

This proposed action is in line with international efforts. At the 16th meeting of the Conference of the Parties to CITES (CoP16), in March 2013, CITES Parties adopted a revised

resolution on trade in elephant specimens (Resolution Conf. 10.10 (Rev. CoP16)), which, among other things, urges Parties with a legal domestic ivory market to ensure that they have in place “comprehensive internal legislative, regulatory, enforcement and other measures to regulate the domestic trade in raw and worked ivory.” Maisels, et al. (2013) asserted that effective multi-level action is imperative to save [forest] elephants and strongly supported the recommendations in the African Elephant Action Plan, of which the highest priority objective was the reduction of poaching and trade in elephant products. Wittemyer, et al. (2014) concluded that “it is obvious that stemming the rate of illegal killing of elephants is paramount.” They call for a global response, including *in situ* conservation efforts, enforcement of end-use markets, and curbing demand in order to reduce black market prices for ivory and “alleviate the unsustainable pressure from illegal killing on wild populations.” The National Strategy for Combating Wildlife Trafficking also calls for expanding international cooperation and commitment and emphasizes the need for a global response, recognizing that these are issues that no one country can solve on its own.

In developing this draft EA, the Service considered three alternative actions, including the preferred alternative. These alternative actions are described below. Under each of these alternatives, the provisions and requirements of CITES and the AfECA would continue to apply to the African elephant and would not be affected by a change to the ESA regulatory regime for the African elephant.

Alternative 1, the “no action” alternative: Under the “no action” alternative, the existing 4(d) rule for the African elephant (50 CFR 17.40(e)) would remain in place in its current form. The 4(d) rule regulates: import into and export from the United States; possession, sale, offer for sale, receipt, delivery, transport, shipment, and export of any African elephant specimen

that was *illegally imported* into the United States [emphasis added]; and sale or offer for sale of any sport-hunted trophy imported into the United States in violation of a permit condition. It allows import and export without an ESA permit of specimens other than ivory (such as leather) and sport-hunted trophies when CITES permitting requirements (in 50 CFR part 23) and general Service permitting requirements (in 50 CFR part 13) are met. The 4(d) rule provides conditions under which sport-hunted African elephant trophies may be imported into the United States, including a finding that the killing of the animal would enhance the survival of the species. Import of ivory other than sport-hunted trophies is allowed only if it is a *bona fide* antique (defined in the rule as “greater than 100 years of age on the day of import”) or it was exported from the United States after being registered with the Service. (However, the moratorium on import into the United States of African elephant ivory, other than sport-hunted trophies, established under the AfECA in 1989 remains in effect.) Worked ivory may be exported, without an ESA permit, in accordance with the permit requirements in 50 CFR parts 13 and 23. The 4(d) rule prohibits export from the United States of raw ivory for commercial purposes under any circumstances. (It is also unlawful, under the AfECA, to export raw ivory from the United States.)

Alternative 2, the preferred alternative: Revise the 4(d) rule for the African elephant so that the provisions in 50 CFR 17.31 and 17.32 apply to the African elephant, with certain specific exceptions, and impose a limit on the number of sport-hunted African elephant trophies that can be imported by a hunter in a given year. General prohibitions that apply to threatened wildlife, in 50 CFR 17.31, include prohibitions on import or export, take, possession and other acts with unlawfully taken wildlife, sale or offer for sale in interstate or foreign commerce, and certain other activities conducted for the purpose of engaging in interstate or foreign commerce.

A person wishing to engage in an activity otherwise prohibited would need to obtain an ESA permit, under 50 CFR 17.32. The preferred alternative contains exceptions to the provisions in 50 CFR 17.31 and 17.32 for: parts and products other than ivory; live African elephants (not including take); under specific conditions, noncommercial import and export of worked ivory contained in musical instruments, as part of a traveling exhibition, or as part of a household move or inheritance; import for genuine scientific or law enforcement purposes; and certain interstate or foreign commerce of qualifying manufactured items containing a *de minimis* (small) amount of worked ivory.

Under the preferred alternative, African elephants and their parts and products other than ivory and sport-hunted trophies would be allowed for import, export, and sale or offer for sale in interstate or foreign commerce without an ESA permit, provided the provisions of 50 CFR parts 13 (general permitting), 14 (import and export of wildlife), and 23 (CITES) have been met. In addition, the non-commercial import and export of worked ivory that is contained in a musical instrument or is part of a traveling exhibition or a household move or inheritance would be allowed if specific conditions are met, including that the ivory was legally acquired prior to February 26, 1976 (the date the African elephant was first listed under CITES) and that the item is accompanied by the appropriate, valid CITES document. There are also provisions in the preferred alternative that allow import of ivory for genuine scientific purposes that will contribute to the conservation of the species and for law enforcement purposes by a law enforcement agency.

The preferred alternative would allow import of sport-hunted African elephant trophies under similar conditions as the current 4(d) rule, including a determination that the killing of the animal would enhance the survival of the species and that the requirements in 50 CFR parts 13,

14, and 23 are met. Under the preferred alternative, import of sport-hunted African elephant trophies would be limited to two per hunter per year and would require an ESA permit issued under 50 CFR 17.32. The preferred alternative would prohibit sale or offer for sale and other activities in interstate and foreign commerce of African elephant sport-hunted trophies.

Sale or offer for sale of ivory in interstate or foreign commerce and certain other activities conducted for the purpose of engaging in interstate or foreign commerce in ivory would be prohibited under the preferred alternative, except for qualifying antiques and manufactured items that contain a *de minimis* amount of ivory, provided those manufactured items meet specific conditions. To qualify for this *de minimis* exception, a manufactured item would have to meet the following conditions: if the ivory is located in the United States, it was imported prior to January 18, 1990 (the date the African elephant was listed in CITES Appendix I) or under a CITES pre-Convention certificate with no limitation on its commercial use; if the ivory is located outside the United States, it was removed from the wild prior to February 26, 1976 (the date the African elephant was first listed under CITES); the item is not made wholly or primarily of ivory; the ivory is a fixed component of a larger manufactured item and is not the primary source of the value of the item; the total weight of the ivory component(s) of the item is less than 200 grams; the ivory is not raw; and the item was manufactured before the effective date of the final rule.

Export of raw ivory would be prohibited under the preferred alternative. Import of raw ivory would also be prohibited except for sport-hunted trophies and ivory for law enforcement or genuine scientific purposes that would contribute to the conservation of the African elephant. . Ivory that qualifies as an antique under the ESA is exempt from the prohibitions in the 4(d) rule.

To qualify for the antique exception, an item must meet all four criteria under section 10(h) of the ESA (16 U.S.C. 1539(h)).

Under the preferred alternative, the prohibitions in § 17.31 apply to the African elephant, except as specifically provided in the 4(d) rule. We have chosen not to create an exception for take, and therefore take of live African elephants within the United States would be prohibited. (Take is not regulated under the current 4(d) rule.)

Alternative 3, removal of the 4(d) rule for the African elephant: Under alternative 3, we would remove the 4(d) rule by deleting 50 CFR 17.40(e). In the absence of a 4(d) rule, African elephants, including all African elephant parts and products, would be subject to the regulatory provisions for species classified as threatened under the ESA (50 CFR 17.31 and 17.32).

General prohibitions that apply to threatened wildlife, in 50 CFR 17.31, include prohibitions on import or export, take, possession and other acts with unlawfully taken wildlife, sale or offer for sale in interstate or foreign commerce, and certain other activities conducted for the purpose of engaging in interstate or foreign commerce. A person wishing to engage in an activity otherwise prohibited would need to obtain an ESA permit, under 50 CFR 17.32. Permits issued under 50 CFR 17.32 must be for “scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act.”

Environmental impacts of alternatives

The National Environmental Policy Act (NEPA) calls on Federal agencies to prepare a “detailed statement” on major Federal actions “significantly affecting the quality of the human environment” on the environmental impact of the proposed action and alternatives to the

proposed action. Under the Council on Environmental Quality regulations (40 CFR 1508.14), the “human environment” is to be interpreted to include “the natural and physical environment and the relationship of people with that environment.” Agencies must consider both direct effects “which are caused by the action and occur at the same time and place” and indirect effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” The significance of an action is to be analyzed considering both context (such as society as a whole, the affected region, the affected interests, and the locality) and intensity (the severity of the impact) (40 CFR 1508.27). On July 1, 1997, the Council on Environmental Quality issued a memorandum providing guidance on NEPA analyses for transboundary impacts, which states in part that “agencies must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States.” Consistent with this memorandum, we have considered the reasonably foreseeable impacts that the alternative actions (including the no action alternative) might have in African elephant range countries.

Transboundary impacts. Effects on the natural environment will occur in African elephant range countries. They will be long-term, indirect, cumulative effects resulting from this proposed action, other U.S. efforts, and actions taken by other countries around the world to stop poaching of elephants and combat trafficking of elephant ivory. These effects will be positive for the conservation of wild African elephants.

In addition to impacts on wild populations of elephants, elephant poaching takes a human toll. A discussion of the involvement of organized crime in elephant poaching in the 2013 UNEP report, *Elephants in the Dust*, stated that the “involvement of organized crime, influx of arms and the likelihood of encountering combat-hardened members of the military or militias

pose a great risk to park rangers.” The Thin Green Line Foundation (<http://thingreenline.org.au/>) estimates that over 1,000 park rangers have been killed in the line of duty over the last 10 years, 80 percent of them by commercial poachers and armed militia groups. In July 2014, the Foundation reported that over 100 rangers lost their lives in 2013, and more than 50 died in 2014 (at least 19 of them in Africa).

Participants at the Southern Africa Regional Wildlife Trafficking Workshop, in October 2013, adopted a resolution calling for the establishment of a network of national wildlife law enforcement agencies in southern Africa to support investigations, arrests and prosecutions of wildlife crimes in all participating countries. The resolution stated that “wildlife poaching and trafficking, like other forms of illicit trade, undermine security across nations and between neighboring countries” and, in addition, that “wildlife poaching and trafficking threaten nature tourism and the safari industry, which are invaluable sources of revenue for marginalized rural communities and cornerstones of rural economic development strategies.”

The U.S. Senate resolution designating March 3, 2014, as the first annual World Wildlife Day (SRES 374 ATS) recognizes that wildlife trafficking has “become a major transnational organized crime” and that wildlife poaching “presents significant security and stability challenges for military and police forces in African nations that are often threatened by heavily armed poachers and the criminal and extremist allies of such poachers.” The resolution highlights the need to, among other things, “raise awareness of the urgent need to step up the fight against wildlife crime, which has wide-ranging economic, environmental, and social impacts.”

We expect that the effects of the proposed action will be positive not only for the conservation of wild African elephants but also for the humans who work to protect them and for those who benefit from their continued existence and their role in the ecosystems in which they live. We believe that the cumulative impacts of the proposed action, together with other U.S. Government actions and actions taken by other governments around the world to address the poaching crisis, will result in long-term benefits for the conservation of Africa elephants.

Impacts within the United States. None of the alternatives considered, including the preferred alternative, will impact the natural or physical environment in the United States. Under the preferred alternative (revision of the 4(d) rule) and the third alternative (removal of the 4(d) rule), take of live elephants within the United States would be prohibited. Under the ESA, take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct, with an ESA protected species. Both the preferred alternative and the third alternative would prohibit take of any live African elephant within the United States, within the U.S. territorial sea, or upon the high seas (with the latter two acts unlikely but possibly occurring during transport of a live elephant, such as during transport to or from the United States). Take of endangered or threatened species is not regulated under the ESA beyond these geographic areas. Take would not include animal husbandry practices that meet minimum standards under the Animal Welfare Act, breeding procedures, and veterinary care that is not likely to result in injury to the elephant. (See the definition of “harass” at 50 CFR 17.3.) This prohibition is the same as the prohibition in place for Asian elephants (since 1976) and would help to ensure that elephants held in captivity in the United States receive an appropriate standard of care.

While the taking of live African elephants held in captivity within the United States or being transported is not a threat to the species, including a prohibition against take is a standard protection for threatened species and ensures an adequate level of care for wildlife held in captivity. We expect this proposed prohibition to have positive biological and social impacts on captive African elephants within the United States.

Other direct impacts within the United States will be economic. The Service has prepared a draft economic analysis, which is attached to this draft EA. Indirect effects will include increased awareness of the conservation needs of the African elephant and the role that the United States plays in the conservation of the species, which may lead to a reduction in demand for elephant ivory.

Alternative 1, the “no action” alternative. Under the “no action” alternative, the existing 4(d) rule for the African elephant (50 CFR 17.40(e)) would remain in place in its current form and any currently allowed imports, exports, take, and activities in interstate or foreign commerce would continue unchanged. In preparing this analysis, we considered economic impacts in the United States by evaluating imports into and exports from the United States of African elephant specimens, including ivory, non-ivory parts and products, and sport-hunted trophies. We also considered domestic sales.

Import/export of non-ivory African elephant specimens: Import and export of non-ivory African elephant specimens is allowed without an ESA permit under the current 4(d) rule, provided the permitting requirements in 50 CFR parts 13 and 23 have been met. The CITES listing annotation for Appendix-II populations of African elephant explicitly allows for

commercial trade in hides (for Botswana, Namibia, South Africa, and Zimbabwe) and in leather products (for Botswana, Namibia, and South Africa).

Data from our Office of Law Enforcement show that during 2007–2012 nearly 38,000 non-ivory African elephant items (excluding live animals, scientific specimens, and sport-hunted trophies) were imported into the United States with a total declared value of \$4.9 million. (Declared value is the value assigned by the importer at the time of import and is typically less than the retail value. The retail value is unknown.) The number of items imported annually during that period ranged from 1,983 (in 2007) to 12,184 (in 2011). The annual total declared value ranged from \$496,934 (2007) to \$1.1 million (2011). During this same time period, there were 253 non-ivory African elephant items (excluding live animals and scientific specimens) exported from the United States, with a total declared value of \$481,475. The number of items exported annually ranged from 0 (in 2007 and 2011) to 157 (in 2009). The annual total declared value, for the years in which there were exports of non-ivory African elephant specimens, ranged from \$4,890 (2010) to \$438,344 (2012).

Import/export of African elephant ivory: Although the current 4(d) rule allows import of antique ivory (defined in the rule as “greater than 100 years of age on the day of import”) and ivory that was exported from the United States after being registered with the Service, import of African elephant ivory, except for sport-hunted trophies, is prohibited under the AfECA moratorium. Although this moratorium has been in place since 1989, in recent years the Service has allowed, as a matter of law enforcement discretion, import of some worked ivory including the commercial import of antiques. This changed with issuance of Director’s Order No. 210. Director’s Order No. 210 (as revised on May 15, 2014) provides for the use of law enforcement discretion in implementing the AfECA moratorium to allow only certain limited, noncommercial

imports of African elephant ivory into the United States, including: ivory for law enforcement or genuine scientific purposes that will contribute to the conservation of the species; and certain worked ivory contained in a musical instrument, or as part of a traveling exhibition or a household move or inheritance, when specific conditions are met. Commercial import of ivory, regardless of its age, is prohibited.

Export of raw ivory for commercial purposes is prohibited under the current 4(d) rule. The AfECA prohibits any export of raw ivory from the United States. Under the current 4(d) rule, worked African elephant ivory may be exported from the United States, without an ESA permit, provided the permitting requirements in 50 CFR parts 13 and 23 have been met. The AfECA does not address export of worked ivory.

Our Office of Law Enforcement data show that during 2007–2012 there were 6,239 items containing worked African elephant ivory exported from the United States, with a total declared value of \$493 million. The number of items exported annually ranged from 591 (in 2008) to 1,925 (in 2009). The annual total declared value ranged from \$29.2 million (2012) to \$175.7 million (2007). Ivory exports were categorized by type, including ivory carvings, ivory jewelry, ivory piano keys, and pianos with ivory keys. Ivory carvings accounted for over 75% of the worked ivory items exported and over 99% of the total declared value. The vast majority of these items were greater than 100 years old. The declared value of items less than 100 years old, which therefore could not be considered antiques, exported during 2007-2011 ranged from about \$607,000 (2009) to \$3.7 million (2007) annually, representing from 0.6% to 8.3% of the total annual declared value during those years.

Sport-hunted trophies: The AfECA specifically allows for import of sport-hunted trophies. Sport hunting, as part of a sound management program, can provide benefits to the conservation of the species. Under CITES Resolution Conf. 10.10 (Rev. CoP16), *Trade in elephant specimens*, an African elephant range country that wishes to export raw ivory as sport-hunted trophies is to establish, as part of its management of the population, an annual export quota (expressed as a maximum number of tusks) and communicate this quota to the CITES Secretariat. CITES Parties are not to authorize import of raw ivory as part of a hunting trophy unless a quota for the range country in question has been published by the Secretariat for the year in which the elephant was harvested for export. The current 4(d) rule allows import of sport-hunted trophies when certain conditions are met, including that the Service has received notice of the quota for the country in which the trophy was taken.

There are currently no limits on the number of sport-hunted African elephant trophies that an individual hunter may import into the United States in a given year. During 2010-2012, there were, on average, about 400 shipments containing African elephant sport-hunted trophies imported per year. More than 95% of these shipments contained fewer than three African elephant trophies.

Interstate and foreign commerce: The current 4(d) rule does not regulate activities in foreign commerce or interstate commerce of legally imported African elephant specimens, including ivory. Comprehensive data for the domestic market are unavailable. In a 2006/2007 survey of selected metropolitan areas across the United States, Martin and Stiles (2008) identified retail establishments trading in worked ivory, including ivory from African elephants. In each area surveyed, the surveyors visited major flea markets, antique markets, main shopping areas for antiques and crafts, department stores, and luxury hotel gift shops. The study does not

identify all establishments trading in ivory but gives a general idea of the number of establishments and geographic scope. In the 16 geographic areas surveyed, the authors identified a total of 657 retail outlets offering a total of more than 24,000 ivory products for sale. Of the areas surveyed, those with the most retail outlets and the greatest number of ivory products for sale were: New York City (124 retail outlets containing a total of 11,376 ivory products); San Francisco Bay area (49 retail outlets containing a total of 2,777 ivory products); and greater Los Angeles (170 retail outlets containing a total of 2,605 ivory products). Although a precise estimate is not possible, it seems likely that most of these establishments would be classified as small businesses.

In March and April of 2014, one of the authors of the 2008 study conducted a follow-up survey (Stiles 2015) in Los Angeles and San Francisco, California. He found a total of more than 1,250 ivory items offered for sale by 107 vendors in these two California cities, “with 777 items and 77 vendors in Los Angeles and well over 473 ivory items and 30 vendors in San Francisco.” While there were “significantly fewer vendors” offering ivory for sale, compared to the 2006-2007 survey, Stiles noted “a much higher incidence of what appears to be ivory of recent manufacture in California, roughly doubling from approximately 25% in 2006 to about half in 2014. In addition, many of the ivory items seen for sale in California advertised as antiques (i.e., more than 100 years old) appear to be more likely from recently killed elephants.”

Under the “no action” alternative, there would be no changes to the status quo and therefore no economic impacts. This alternative does not address the need for improved regulation of the U.S. ivory market and therefore does not allow us to achieve our intended purpose, which is to benefit African elephant conservation. It also does not provide any benefit to captive African elephants in the United States.

Alternative 2, the preferred alternative. Under the preferred alternative, the 4(d) rule for the African elephant would be revised to more strictly regulate U.S. trade in ivory and provide protections for live elephants in the United States. At the same time, the preferred alternative allows for certain activities involving African elephants and African elephant parts and products that would either contribute to the conservation of the species or that do not contribute to the illegal trade in ivory or the illegal killing of elephants.

Import. Given the current poaching crisis, we believe it is necessary to continue to restrict the import of African elephant ivory where that import is likely to contribute to commercialization of ivory. Import of African elephant ivory (other than sport-hunted trophies) would be prohibited under the preferred alternative, with limited exceptions for noncommercial import of ivory for law enforcement purposes and for genuine scientific purposes that will contribute to the conservation of African elephants, and for worked ivory contained in musical instruments, as part of a traveling exhibition, or a household move or inheritance when specific conditions are met. Due to the moratorium (in place since 1989) under the AfECA on import of African elephant ivory and the provisions of Director's Order No. 210, we do not expect a significant economic impact as a result of the proposed changes to the 4(d) rule with regard to import of African elephant ivory.

We propose to allow the import of raw or worked ivory into the United States when it would be directly beneficial for law enforcement efforts. Under this exception, raw or worked ivory could be imported into the United States by an employee or agent of a Federal, State, or tribal government agency for law enforcement purposes. Ivory may be used as evidence to prosecute violations of law, which may require import into the United States of ivory from other countries by a Federal, State, or tribal agency to assist with a law enforcement action in another

country. Without this exception, our ability to enforce Federal laws that protect African elephants would be hindered. Not including this exception would also be contrary to the AfECA's policy to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat, which represents the interests of all parties to CITES including the United States. Any ivory imported under this exception would be strictly for noncommercial law enforcement purposes, and therefore could not subsequently be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity.

We also propose to allow the import of ivory when it would contribute to the conservation of African elephants. Under this exception, either raw or worked African elephant ivory could be imported into the United States for genuine scientific purposes that would benefit elephant conservation. For example, researchers in the United States have developed techniques to determine the origin of ivory, and the import of ivory samples is essential to this work. Prohibiting import of scientific samples may impede science that could assist in conserving the species. We believe that allowing under the 4(d) rule import of ivory in these circumstances is necessary and appropriate for the conservation of the African elephant; it is also consistent with the AfECA's purpose to "perpetuate healthy populations of African elephants." Any ivory imported under this exception would be strictly for genuine scientific purposes, and could not subsequently be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity.

The preferred alternative also contains specific exceptions to the prohibition on import for noncommercial import of worked ivory that was legally acquired prior to February 26, 1976 (the date the African elephant was listed under CITES), and is either part of a musical instrument or a traveling exhibition and meets specific conditions, including that it is accompanied by a specific valid CITES document. These exceptions are intended to allow for the frequent cross-border movement of musical instruments and items in a traveling exhibition, under a CITES document that functions like a passport, where the items will not be sold or otherwise transferred while outside their country of usual residence. This will allow musicians to travel internationally with their instruments containing African elephant ivory for performances or other personal or cultural activities and will allow items of historical and cultural value to enter the United States as part of a museum or other exhibition.

The preferred alternative also includes a narrow exception to the prohibition on import for items that are part of a household move or inheritance. Like the exceptions for musical instruments and items in a traveling exhibition, to qualify for this exception, items imported as part of a household move or inheritance must contain worked (not raw) ivory that that was legally acquired prior to February 26, 1976, and the items may not subsequently be used for any commercial purpose. We believe that allowing these exceptions for import of worked ivory under conditions and criteria that make it unlikely that the activity will contribute to the killing of elephants in Africa will provide cultural benefits and help to minimize potential adverse effects on the human environment.

Import of non-ivory African elephant specimens would not be impacted under the preferred alternative. We propose to continue to allow the import, without a threatened species permit issued under 50 CFR 17.32, of live animals and parts and products other than ivory and

sport-hunted trophies. We have no evidence to indicate that trade in these items is contributing to the illegal killing of elephants in Africa. Import of non-ivory African elephant specimens, which averaged about \$820,000 annually from 2007 to 2012, would continue under the preferred alternative as allowed under Alternative 1 (the “no action” alternative).

Sport-hunted trophies. Under the preferred alternative, the number of African elephant sport-hunted trophies a hunter could import annually would be limited to two trophies per hunter per year. We are proposing to make this change to address a small number of circumstances in which U.S. hunters have participated in elephant culling operations and imported, as sport-hunted trophies, a large number of elephant tusks from animals taken as part of the cull. We believe that this has resulted, in some cases, in the import of commercial quantities of ivory as sport-hunted trophies.

Based on our import records, this change may impact about 7 hunters and 3-4 percent of trophy shipments annually. While the import of sport-hunted trophies for the personal use of the hunter is a noncommercial activity, we realize that sport hunts are a source of income for guides, outfitters, governments, and others in many range countries and that a portion of the money generated by these hunts is directed to elephant conservation efforts. We do not have information to be able to quantify a potential impact, but we expect that if there is an impact it will be small, given the small number of U.S. hunters who are importing more than two African elephant trophies in a given year, and the fact that this proposed alternative does not limit the opportunity to hunt, only the number of trophies that an individual could import in a given year. As noted above, range countries that allow sport hunting of African elephants establish annual quotas for export. Unless otherwise proscribed, a quota for 50 elephants could be filled by one hunter or 50 hunters. We don't believe, based on the information we have, that there is a

shortage of hunters or that placing limits on the number of trophies that U.S. hunters can import in a given year would impact the number of elephants hunted. We are proposing this change to increase control of the U.S. domestic ivory market and to ensure that we are not allowing the import of commercial quantities of ivory as sport-hunted trophies.

Export. Under the preferred alternative, export of worked ivory would be prohibited except for qualifying antiques (which are exempt from the prohibitions in the 4(d) rule) and noncommercial export of worked ivory contained in musical instruments, as part of a traveling exhibition, or a household move or inheritance when specific conditions are met (including that the ivory was removed from the wild prior to February 25, 1976, and that it is accompanied by an appropriate, valid CITES document; see discussion for import). This change would eliminate some portion of worked ivory exports that that are currently allowed under the 4(d) rule and CITES, i.e., CITES pre-Convention specimens that do not qualify as ESA antiques or meet the exceptions as part of a musical instrument, traveling exhibition, or household move or inheritance.

To evaluate this impact, we identified exported ivory items that were less than 100 years old, and therefore could not be considered antique. This segment of U.S. ivory exports accounted for 2.2 percent, by declared value, of total U.S. exports of worked ivory during the 5-year period from 2007 to 2011. We can, therefore, estimate an average annual decrease of 2.2 percent in exports of worked ivory, by declared value, based on the period from 2007 to 2011. It is important to note, however, that the information available to us does not allow us to determine whether those items that were 100 years of age or older would qualify as antiques under the ESA. An item must meet other criteria, in addition to age, to meet the ESA definition of antique. We expect that some portion of these 100-year-old ivory items would not be considered antiques

under the ESA and therefore could not be exported under the proposed revisions to the 4(d) rule (preferred alternative). We do not have sufficient information to be able to quantify this impact and seek input from the public in this regard.

African elephant parts and products other than ivory would continue to be exported under the same conditions as Alternative 1 (the no action alternative). Therefore, there would be no impact to this market segment.

Interstate and foreign commerce. The current 4(d) rule for the African elephant does not include many of the ESA prohibitions related to interstate and foreign commerce. It prohibits possession, sale or offer for sale, and receipt, delivery, transport, or shipment of African elephant specimens that were illegally imported into the United States and sale or offer for sale of any sport-hunted trophy imported into the United States in violation of a permit condition. These existing restrictions would remain in place under the preferred alternative. In addition, the preferred alternative would prohibit sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity, except for qualifying antiques and manufactured items that contain a small (*de minimis*) amount of ivory and meet certain criteria. We believe that more effective control of the U.S. domestic market for ivory, and of participation in foreign ivory markets by individuals subject to U.S. jurisdiction, is essential for curtailing the role of U.S. markets in the global illegal ivory trade.

Since announcing our intentions to remove or revise the 4(d) rule, the Service has received considerable input from the public, including from musicians and musical instrument manufacturers, museums, auction houses, antique dealers, and others who may be impacted by

these proposed changes. We have considered relevant information provided by these groups, and in the preferred alternative propose to allow sale and offer for sale of ivory in interstate or foreign commerce along with delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity without a threatened species permit for manufactured items containing *de minimis* amounts of ivory. To meet the *de minimis* exception, an item must meet the following criteria: for items located in the United States, the ivory was imported into the United States prior to January 18, 1990 (the date the African elephant was listed in CITES Appendix I), or was imported into the United States under a CITES pre-Convention certificate with no limitation on its commercial use; for items located outside the United States, the ivory is pre-Convention (removed from the wild prior to February 26, 1976 (the date the African elephant was first listed under CITES)); the ivory is a fixed component or components of a larger manufactured item and is not the primary source of value of the item; the manufactured item is not made wholly or primarily of ivory; the total weight of the ivory component or components is less than 200 grams; the ivory is not raw; and the item was manufactured before the effective date of the final rule for this action.

We have chosen 200 grams as the *de minimis* limit because we understand that this is the approximate maximum weight of the ivory veneer on a piano with a full set of ivory keys. Our law enforcement experience over the last 25 years has shown that the majority of items in the illegal ivory trade are either raw ivory (tusks and pieces of tusks) or manufactured pieces (mostly carvings) that are composed entirely or primarily of ivory. In November 2013, the Service destroyed six tons of seized ivory that represented over 25 years of law enforcement efforts to control illegal ivory trade in the United States. The six tons of contraband ivory did not include any items that would be covered by this exception. As demonstrated by the thousands of seized

ivory items destroyed in the “crush,” ivory traffickers are not manufacturing items with small amounts of pre-Convention ivory or dealing in such items. Rather, because the incentive to deal in illegal ivory is economic, the trade focuses on raw ivory and large pieces of carved ivory from which the highest profits can be made. The information we have about the domestic market, including the surveys conducted by Martin and Stiles and our own investigations, indicates that trade in the types of manufactured items that would qualify for this proposed *de minimis* exception is not contributing to or driving the illegal ivory trade. Martin and Stiles identify recently made and presumably illegally imported items as figurines, netsukes, and jewelry, none of which would qualify under the criteria proposed for a *de minimis* exception.

These changes will allow us to appropriately regulate the U.S. domestic market in ivory as well as U.S. participation in global markets for ivory and achieve our goal of conserving the African elephant, while allowing limited continued trade that is not contributing to the poaching of elephants, which will help to minimize adverse effects on the quality of the human environment. For this analysis, we assume that the percentage of non-antique ivory is similar to the export market. Assuming that the domestic market is similar to the export market, then non-antique worked ivory domestic sales would also decrease 2.2 percent annually under the preferred alternative. Because we are proposing to allow domestic and foreign commerce commercial activities with certain items containing *de minimis* amounts of ivory, and many of these items would be precluded from export, it is possible that an even smaller percentage of the domestic market would be impacted compared to the export market. Certain commercial activities such as sale in interstate or foreign commerce of raw ivory and non-antique worked ivory, with the exception of those items containing *de minimis* amounts of worked ivory mentioned above, would no longer be permitted. We seek input from the public on the impact to

the domestic ivory market. Improved domestic controls will make it more difficult to launder illegal elephant ivory through U.S. markets, which we believe will ultimately contribute to a reduction in the illegal killing of African elephants.

We propose to allow continued sale or offer for sale in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity of live animals and African elephant parts and products other than ivory and sport-hunted trophies, without a threatened species permit. We have no evidence to suggest that these activities are contributing to the poaching crisis and would therefore continue under the same conditions as Alternative 1 (the no action alternative). As a result, there would be no impact to this market segment.

The restrictions on import and export in the preferred alternative are appropriate because strict regulation of the import and export of ivory is necessary to prevent U.S. citizens and others subject to the jurisdiction of the United States from engaging in activities that could contribute to the illegal killing of elephants. However, in situations where prohibiting this activity could actually be detrimental to the conservation of the species, or in limited circumstances where controls would be in place to make it likely that the activity will not contribute to poaching or illegal trade in ivory, we have proposed to allow certain narrow exceptions to the prohibitions. The preferred alternative would facilitate enforcement efforts within the United States and address the need for improved regulation of U.S. trade in elephant ivory. This alternative includes measures to avoid or minimize adverse effects on the quality of the human environment while still achieving the purpose, which is to benefit the conservation of the African elephant. We expect that, in the short term, there will be economic losses for businesses in the United States that manufacture products from raw ivory (e.g., pool cues and pool balls, gun grips, knife

handles, jewelry, and musical instrument parts) and that buy and sell items containing non-antique African elephant ivory. We believe that these short-term economic impacts are outweighed by the long-term conservation benefits to the African elephant. The preferred alternative allows us to achieve our intended purpose, which is to benefit African elephant conservation, by improving regulation of the U.S. ivory market. At the same time, the preferred alternative minimizes economic impacts by allowing for certain activities that we do not believe are contributing to the poaching crisis in Africa and that have a low risk of being associated with illegal ivory trade.

Alternative 3, removal of the 4(d) rule for the African elephant. Under alternative 3, the 4(d) rule for the African elephant would be removed from our regulations. In the absence of a 4(d) rule, a threatened species is subject to the prohibitions and exceptions in 50 CFR 17.31 and 17.32. This includes general prohibitions on: import or 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 wildlife; and other activities conducted for the purpose of engaging in interstate or foreign commerce, including sale or offer for sale in interstate or foreign commerce. A person wishing to engage in an activity otherwise prohibited would need to obtain an ESA permit, under 50 CFR 17.32. Permits issued under 50 CFR 17.32 must be for “scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act.”

Import. The import of African elephants, including African elephant parts and products, would be prohibited without an ESA permit, with limited exceptions. We do not expect that removal of the 4(d) rule would significantly impact import of African elephant ivory because of

the moratorium on the import into the United States of African elephant ivory, other than sport-hunted trophies, established under the AfECA and in place since 1989 and the provisions of Director's Order No. 210. Import of sport-hunted African elephant trophies could continue with ESA permits issued under 50 CFR 17.32 (see *Sport-hunted trophies* below) or, for CITES Appendix-II populations, with only CITES permits.

Import of most non-ivory African elephant parts and products would be prohibited without an ESA permit. Our regulations (see 50 CFR 17.8) allow for import without an ESA permit of specimens of threatened species that are listed in CITES Appendix II if they are accompanied by a CITES document and meet certain additional conditions, including that they were "not acquired in foreign commerce or imported in the course of a commercial activity." Most imports of non-ivory African elephant specimens would not qualify for this exception, either because they are commercial or because they are Appendix-I specimens. During the six-year-period from 2007 to 2012, commercial shipments accounted for 91percent by number and 85 percent by total declared value of non-ivory African elephant imports. The average annual declared value of these commercial imports was about \$705,000 during the six-year period evaluated. In most years, most non-ivory imports (both by number and by declared value) were categorized as skins, skin pieces, leather products, and shoes. Since it is unlikely that commercial import of skins or leather products, etc. would meet any of the purposes for which an ESA permit could be issued, we expect that removing the 4(d) rule would eliminate the vast majority of these imports of non-ivory African elephant specimens.

Sport-hunted trophies. We do not expect that removal of the 4(d) rule would significantly impact the import into the United States of African elephant sport-hunted trophies. The 4(d) rule provides conditions under which sport-hunted African elephant trophies may be

imported into the United States, i.e., the trophy originates in a country for which the Service has received notice of an ivory quota for the year of export; the requirements in 50 CFR parts 13 and 23 have been met; a determination is made that the killing of the trophy animal would enhance the survival of the species; and the trophy is marked in accordance with CITES requirements. If the 4(d) rule is removed, imports of African elephant hunting trophies would still need to comply with relevant provisions in 50 CFR parts 13 (general permitting) and 23 (CITES), including CITES marking and quota requirements. Import of sport-hunted trophies from Appendix-I populations would require an ESA permit, which would require a determination that killing of the trophy animal would enhance the survival of the species, the same determination that is currently required under the 4(d) rule. Under the 4(d) rule, this “enhancement finding” is required for sport-hunted trophies from both Appendix-I and Appendix-II populations. With removal of the 4(d) rule, an ESA enhancement finding would only be required for animals from Appendix-I populations. Currently, Botswana, Namibia, South Africa, and Zimbabwe are the only countries with Appendix-II populations. Sport-hunted African elephant trophies from Appendix-II populations could continue to be imported without an ESA permit and no enhancement finding would be required. By removing the 4(d) rule and its requirement for an enhancement finding for import of all African elephant trophies, we would be lowering the standard of protection for elephants from Appendix-II populations. While, under CITES, the exporting country must determine that the trophy animal was legally acquired and that the export will not be detrimental to the survival of the species, there is no provision to ensure that the hunting of the elephant and subsequent export would provide any benefit to the species. To allow import under the current ESA 4(d) rule, we must determine that the killing of the trophy animal will enhance the survival of the species. The Service considers a number of factors in its

evaluation of whether sport-hunting is contributing to the enhancement of the survival of African elephants in a given range country. We consider, among other things, whether the country has a robust national or regional management plan for elephants and whether it has the resources and political will to effectively implement the plan. We also evaluate the status and trends of the elephant population over time; how the government monitors and addresses human-elephant conflict, poaching, and sport hunting; the amount of protected area set aside or managed for elephants; and how the sport-hunting program has been incorporated into management strategies. Removal of the 4(d) rule would eliminate the requirement for an ESA enhancement finding for import of sport-hunted trophies from Appendix-II populations. Removal of the 4(d) rule would not allow us to place a limit on the number of sport-hunted trophies a hunter can import in a given year, as we have proposed under the preferred alternative. As stated previously, the lack of a limit on sport-hunted trophy imports has allowed, in some cases, import of commercial quantities of raw ivory as sport-hunted trophies. For these reasons, we believe that removing the special rule could have negative conservation impacts, over time, for African elephants.

Export. Under the 4(d) rule, raw ivory may not be exported from the United States for commercial purposes under any circumstances. Removal of the 4(d) rule would not impact export of raw ivory because export of raw ivory is also prohibited under the AfECA (16 USC 4223 (2)). Under the 4(d) rule, worked ivory and African elephant specimens other than sport-hunted trophies and ivory (e.g., hides, leather products, and scientific samples) may be exported provided all permit requirements of 50 CFR parts 13 and 23 have been met. Removal of the 4(d) rule would mean that, in addition to meeting the requirements in 50 CFR parts 13 and 23, export of any African elephant specimen would require an ESA permit issued under 50 CFR 17.32,

unless it qualifies as an antique or as “pre-Act” (under ESA Section 9(b)(1)), in which case no ESA permit is required, but the specimen must be accompanied by a CITES document.

The declared value of non-ivory African elephant specimens exported from the United States during 2007 through 2012 ranged from \$0 (there were no such exports in 2007 or 2011) to \$438,344 annually. Although commercial shipments accounted for 93 percent, by number of specimens, of non-ivory African elephant exports during that period, they represented only 35 percent of declared value. With removal of the 4(d) rule, we expect that these commercial shipments would be eliminated, as they would likely not qualify for an ESA permit or as antiques or Section 9(b)(1) pre-Act items. Some portion of the other shipments (which included items for educational, scientific, and exhibition purposes) would likely meet the requirements for an ESA permit and therefore could continue to be exported. We do not have enough information to quantify this impact, however.

More than 6,200 items containing worked African elephant ivory (including ivory carvings, ivory jewelry, ivory piano keys, and pianos with ivory keys) were exported from the United States during 2007-2012. The annual declared value of worked African elephant ivory exported from the United States ranged from \$29 million (2012) to \$175.7 million (2007) during that period. Removal of the 4(d) rule would make it unlawful (without a permit issued under 50 CFR 17.32) to export worked ivory that does not qualify as an antique or under the ESA Section 9(b)(1) pre-Act exemption. Under the current 4(d) rule, export of worked African elephant ivory is allowed if the permit requirements in 50 CFR parts 13 and 23 are met. CITES provisions (50 CFR part 23) allow commercial trade of “pre-Convention” specimens (ivory that was removed from the wild prior to February 26, 1976, the date the African elephant was first listed under CITES).

If the 4(d) rule is removed, export of “pre-Convention” worked ivory that is not 100 years old or older or does not meet the other requirements to qualify as an ESA antique or as pre-Act (under ESA Section 9(b)(1)) would be prohibited. The impact of removing the 4(d) rule on commercial export of worked ivory from the United States would be the same as for the preferred alternative. As described for the preferred alternative, to evaluate this impact we identified exported ivory items that were less than 100 years old, and therefore could not be considered antique. During the period 2007-2011, the declared value of exported worked ivory that was less than 100 years old averaged \$2.1 million annually, which represents 2.2 percent of the total declared value of worked ivory exports during that period. As a result, we can estimate that removal of the 4(d) rule would result in an annual decrease of at 2.2 percent, by declared value, in export of worked African elephant ivory, based on the 2007-2011 data. It is important to note, however, that the information available to us does not allow us to determine whether the items that were 100 years of age or older would qualify as antiques under the ESA. An item must meet other criteria, in addition to age, to meet the ESA definition of antique. We expect that some portion of these 100-year-old ivory items would not be considered antiques under the ESA and therefore could not be exported if the 4(d) rule was removed. In addition, the exceptions provided in the preferred alternative for noncommercial export of ivory, for ivory contained in musical instruments, as part of a traveling exhibition, or a household move or inheritance and for genuine scientific purposes or law enforcement purposes (see discussion of the preferred alternative), would not be available if the 4(d) rule is removed. All exports, except for qualifying antiques and Section 9(b)(1) pre-Act specimens, would need to meet the permit requirements in 50 CFR 17.32. Again, we do not have sufficient information to be able to

estimate this impact, although we expect it would be significant. We seek input from the public in this regard.

Interstate and foreign commerce. As noted for the preferred alternative, we expect that the most significant impact of removing the 4(d) rule would be that African elephant specimens, including ivory, would be subject to the ESA prohibitions on activities in interstate or foreign commerce, including the sale or offer for sale in interstate or foreign commerce. This would mean that, except for qualifying antiques, which are exempt from ESA permit requirements, it would be unlawful, without a permit issued under 50 CFR 17.32, “to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity” any African elephant specimen. It would also be unlawful, without a permit issued under 50 CFR 17.32, to “sell or to offer for sale in interstate or foreign commerce” any African elephant specimen. (See the prohibitions in 50 CFR 17.31.) Removal of the 4(d) rule would impact not only the U.S. trade in elephant ivory, but also U.S. trade in all other elephant specimens, including products made from elephant leather. This action would not impact intrastate (within a state) sales (although intrastate sales are regulated under our CITES regulations in 50 CFR 23.55). For this analysis, we assume that the percentage of non-antique ivory is similar to the export market. Assuming that the domestic market is similar to the export market, then non-antique worked ivory domestic sales would also decrease about 2 percent annually under this alternative. We seek input from the public to help quantify this impact to the domestic market.

Removal of the 4(d) rule provides for increased regulation of the U.S. market for all African elephant specimens, including live animals, ivory, and parts and products other than ivory. Like the preferred alternative, alternative 3 would facilitate enforcement efforts within the

United States and address the need for improved regulation of the U.S. domestic market and involvement in foreign ivory markets by individuals subject to U.S. jurisdiction. It would therefore allow us to achieve our purpose, which is to benefit conservation of the African elephant. However, this alternative does not include measures to minimize adverse impacts on the quality of the human environment. It will result, in the short term, in economic losses for businesses in the United States that manufacture products from raw ivory (e.g., pool cues and pool balls, gun grips, knife handles, jewelry, and musical instrument parts), that buy and sell items containing non-antique African elephant ivory (including those that contain *de minimis* quantities of ivory), that manufacture products from African elephant hides, and that buy and sell non-ivory African elephant products, including leather goods.

While this alternative addresses the need for increased regulation of the U.S. ivory market, which we believe will benefit the conservation of the African elephant, it also has negative economic impacts (including prohibitions on trade in leather and leather products) that we believe can be avoided and still allow us to achieve our purpose. Removal of the 4(d) rule will impose prohibitions on activities that we do not believe are contributing to the poaching of elephants or the illegal trade in elephant ivory. Both the preferred alternative (revision of the 4(d) rule) and the third alternative (removal of the 4(d) rule) would contribute positively to the conservation of the African elephant and either would therefore be preferable to the “no action” alternative.

Cumulative impacts

Cumulative impacts are those combined effects on the human environment that result from the incremental impact of the action when added to other past, present, and reasonably

foreseeable future actions regardless of what agency or person undertakes the other actions (40 CFR 1508.7). Our proposal to revise or revoke the African elephant 4(d) rule is one of a series of administrative actions called for under the National Strategy for Combating Wildlife Trafficking, issued by President Obama on February 11, 2014, intended to tighten domestic controls on the trade of elephant ivory in response to an unparalleled increase in poaching of African elephants for their ivory.

FWS administrative actions. Following release of the National Strategy, the Director of the U.S. Fish and Wildlife Service issued Director's Order No. 210, which established policy and procedures for the Service to follow in implementing the National Strategy with regard to trade in elephant ivory and parts and products of other ESA-listed species. Director's Order No. 210, first issued on February 25, 2014, and revised on May 15, 2014, reaffirms the moratorium (in place since June 9, 1989) under the AfECA on import of African elephant ivory, while providing, as a matter of law enforcement discretion, for the import of certain ivory specimens when specific conditions are met. The Director's Order provides for the following: African elephant ivory may be imported by a government agency for law enforcement purposes; African elephant ivory may be imported for genuine scientific purposes that will contribute to the conservation of the species; and worked African elephant ivory may be imported for personal use as part of a household move or inheritance, as part of a musical instrument, or as part of a travelling exhibition provided the worked ivory was acquired prior to February 26, 1976, it has not been transferred from one person to another for financial gain or profit since February 25, 2014, and it is accompanied by a specified valid CITES document. (For details, see Director's Order No. 210.)

The Director's Order also clarifies the way in which the Service will enforce the ESA exception for certain antique items (see Director's Order No. 210, Appendix 1) and reaffirms that the ESA requires that anyone claiming the benefit of a statutory exemption has the burden of proving that the exemption is applicable. The ESA exception for antique items applies to an item (an "ESA antique") that: (a) is not less than 100 years of age; (b) is composed in whole or in part of any endangered species or threatened species listed under section 1533 of the Act; (c) has not been repaired or modified with any part of any such species on or after December 28, 1973; and (d) is entered at a port designated for the import of ESA antiques. Items that meet the ESA antique exception may be sold in interstate commerce, imported, exported, and used in other ways that would otherwise be prohibited under the ESA, without an ESA permit. The Director's Order clarifies that the Service will not enforce the ESA prohibitions for items that meet elements (a), (b), and (c) above but not element (d), if they were imported prior to September 22, 1982 (the date that ESA antique ports were designated by U.S. Customs and Border Protection), or they were created in the United States and never imported.

In May 2014, the Service published a final rule, effective June 26, 2014, revising U.S. CITES-implementing regulations, including provisions regarding the allowed use-after-import of CITES specimens. Under the revised regulations (see 50 CFR 23.55), specimens of CITES Appendix-I species that have been imported into the United States may not be sold within the United States *unless* they were lawfully imported before the species was listed in Appendix I or were imported under a CITES exemption document. Under 50 CFR 23.55, African elephant specimens in the United States may only be used for noncommercial purposes unless the owner can demonstrate (using written records or other documentary evidence) that they were imported prior to January 18, 1990 (the date the African elephant was listed in Appendix I), or that they

were imported under a CITES pre-Convention certificate with no restrictions on their use after import.

All of these actions taken by the Service over the last year impact the U.S. domestic market for African elephant parts and products. We expect that the cumulative impacts of these actions, together with the proposed revision of the 4(d) rule (the preferred alternative), to be effective regulation of the U.S. ivory market, including a decrease in the kinds of items and the amount of African elephant ivory that can be legally bought and sold within the United States and in foreign markets by individuals subject to U.S. jurisdiction.

If the preferred alternative is adopted, along with the administrative actions already taken by the Service and described above, the result will be a ban on commercial import of African elephant ivory. Allowed imports would be limited to sport-hunted trophies (with a limit of 2 trophies per hunter per year), ivory for law enforcement and genuine scientific purposes, and certain worked ivory that meets the following exceptions: the worked ivory was legally acquired prior to February 26, 1976 (the date the African elephant was first listed under CITES); it is either contained in a musical instrument, is part of a traveling exhibition, or is part of a household move or inheritance; and it is accompanied by a valid CITES document. With the exception of ESA antiques, commercial export of African elephant ivory would also be prohibited under the preferred alternative.

Under the preferred alternative, sale or offer for sale of African elephant ivory in interstate or foreign commerce would be prohibited, except for qualifying ESA antiques, and manufactured items that contain a *de minimis* quantity of ivory and meet the following conditions: the ivory was imported into the United States prior to 18 January 1990 (the date the

African elephant was listed in CITES Appendix I) or under a CITES pre-Convention certificate with no limitation on its commercial use; the item is not made wholly or primarily of ivory; the ivory is a fixed component of a larger manufactured item; the total weight of the ivory component(s) of the item is less than 200 grams; the ivory is not raw; and the item was manufactured before the effective date of this rule.

In addition, intrastate (within a state) commerce of African elephant ivory is prohibited under our CITES regulations at 50 CFR 23.55, except where the seller can demonstrate that the item was imported prior to January 1990 (when the African elephant was listed in CITES Appendix I) or that it was imported under a CITES pre-Convention certificate with no limitation on its commercial use.

Other U.S. Government initiatives. The United States is undertaking other initiatives, in addition to the administrative actions described here, to reduce trafficking of elephant ivory and other protected wildlife. As noted previously (see *Purpose and need for the action*), on July 1, 2013, President Obama signed Executive Order 13648 on Combating Wildlife Trafficking. The Executive Order calls on executive departments and agencies to take all appropriate actions within their authority to “enhance domestic efforts to combat wildlife trafficking, to assist foreign nations in building capacity to combat wildlife trafficking, and to assist in combating transnational organized crime.” On February 11, 2014, President Obama issued the National Strategy for Combating Wildlife Trafficking, which identifies three strategic priorities for a whole-of-government approach to tackling wildlife trafficking: strengthening enforcement; reducing demand for illegally traded wildlife; and expanding international cooperation and commitment. On February 11, 2015, the U.S. Departments of the Interior, Justice, and State, as co-chairs of the President’s Task Force on Wildlife Trafficking, released the implementation

plan for the National Strategy. Building upon the Strategy's three strategic priorities, the plan lays out next steps, identifies lead and participating agencies for each objective, and defines how progress will be measured. The implementation plan reaffirms our Nation's commitment to work in partnership with governments, local communities, nongovernmental organizations, and the private sector to stem the illegal trade in wildlife.

Multiple U.S. Government agencies are involved in the fight against wildlife trafficking and are engaged in activities under all three of the strategic priorities identified in the National Strategy. U.S. Government grants and initiatives in support of efforts to combat poaching of elephants and trafficking of elephant ivory include projects that provide for: training, operating expenses, and equipment for anti-poaching patrols; purchase and maintenance of vehicles and other equipment for rangers; expenses for aerial surveillance; and training of dogs for detection and investigation of wildlife crime and protection of rangers and wildlife, including, in one case, deployment of a bloodhound unit for elephant protection in a national park. U.S. Government law enforcement professionals provide training and expertise to foreign partners in Africa through the International Law Enforcement Academy (ILEA) in Botswana (created through a bilateral agreement between the governments of Botswana and the United States to provide training for representatives from countries in sub-Saharan Africa). The U.S. Government also promotes and supports the development and operation of regional Wildlife Enforcement Networks and provides training to develop capacities to investigate, prosecute, and adjudicate wildlife crimes. The U.S. Fish and Wildlife Service Office of Law Enforcement has begun placing special agents in U.S. embassies in key regions to build wildlife law enforcement capacity, coordinate investigations, and facilitate information sharing and training. The U.S. Government also supports research, monitoring and assessment of elephant populations,

landscape and community conservation efforts, and projects to mitigate human-elephant conflict and to reduce demand for elephant ivory. All of these U.S. Government initiatives contribute to the conservation of the African elephant.

A sampling of U.S. Government efforts to benefit conservation of African elephants and to address wildlife trafficking globally is provided in the following links: Information on projects funded through the African Elephant Conservation Fund, established by the African Elephant Conservation Act, is available at:

<http://www.fws.gov/international/grants-and-reporting/project-summaries.html#african-elephant>.

Information on USAID Central Africa Regional Program for the Environment (CARPE) is available at: *<http://www.usaid.gov/central-africa-regional>* and information on CARPE projects aimed at stopping poaching can be found at *<http://carpe.umd.edu/>*.

Information on the USAID Asia's Regional Response to Endangered Species Trafficking (ARREST) program is available at *<http://asean.usmission.gov/arrest.html>*. ARREST is a consortium of partners (including member States, NGOs, and the private sector) working together to fight wildlife trafficking in Asia by reducing consumer demand, strengthening law enforcement, and promoting regional cooperation and anti-trafficking networks.

Information on Department of Justice activities related to fighting wildlife crime is available at *<http://www.justice.gov/enrd/6329.htm>*.

Information on the Coalition Against Wildlife Trafficking, created by the Department of State, can be found at: *<http://www.state.gov/e/oes/ecw/wlt/>*.

Other countries are also taking steps to combat illegal killing of elephants and illegal trade in elephant ivory. At CoP16, in March 2013, the CITES Parties adopted a revised resolution on trade in elephant specimens (Resolution Conf. 10.10 (Rev. CoP16)), which, among other things, urges Parties with a legal domestic ivory market to ensure that they have in place “comprehensive internal legislative, regulatory, enforcement and other measures to regulate the domestic trade in raw and worked ivory” and recommends that Parties “prohibit the unregulated domestic sale of raw or worked ivory.” The resolution also calls on CITES Parties to: maintain an inventory of government-held stockpiles of ivory within their country and report to the CITES Secretariat annually on the inventory; engage in public awareness campaigns, including on supply and demand reduction, the impact of illegal killing and illegal trade on elephant populations, and the requirements for legal trade in ivory; strengthen law enforcement and border controls to enforce legislation concerning trade in elephant specimens; and cooperate in the development of techniques to enhance the traceability of elephant specimens in trade.

In March 2013, the CITES Standing Committee adopted a series of recommendations directed to Parties identified as significant source, transit or destination countries for illegally traded elephant ivory. The eight countries identified have developed and begun to implement national ivory action plans with time frames and milestones for improving control of trade in ivory. Activities included in the action plans focus on efforts to improve: legislation and regulations; enforcement efforts, including intelligence gathering and collaboration, at national, regional, and international levels; and outreach, public awareness, and education. Some of the plans also include activities related to training and capacity building, management of confiscated ivory, community-based conservation, and anti-corruption. In July 2014, the CITES Standing Committee evaluated progress by these eight countries and made further recommendations for

continued progress. The Committee also expanded its recommendations for countries identified as being of “secondary concern” and “of importance to watch” with regard to illegal ivory trade, including a call for a number of these countries to develop and implement national ivory action plans and “take urgent measures” to ensure significant progress on implementation of these plans by the next meeting of the Standing Committee in January 2016.

The International Consortium on Combating Wildlife Crime (ICCWC) represents another important international endeavor. ICCWC is the collaborative effort of five inter-governmental organizations working to support national wildlife law enforcement agencies and sub-regional and regional networks that act in defense of natural resources. The ICCWC partners are the CITES Secretariat, INTERPOL, the United Nations Office on Drugs and Crime, the World Bank, and the World Customs Organization. Information on ICCWC is available at <http://www.cites.org/eng/prog/iccwc.php>.

Eliminating poaching of elephants and trafficking of ivory can only be achieved through a concerted, multi-faceted international effort. In issuing the National Strategy for Combating Wildlife Trafficking, President Obama recognized that “this is a global challenge requiring global solutions” and stated that we will work with foreign governments, international organizations, nongovernmental organizations, and the private sector to maximize our impacts in addressing this challenge. In addition, the National Strategy asserts that “the United States must curtail its own role in the illegal trade in wildlife and must lead in addressing this issue on the global stage.” The United States is committed to doing its part to fight wildlife trafficking and to ensure the conservation of African elephants in the wild.

We expect that in the long term, the cumulative impact of the proposed revisions to the 4(d) rule, and other measures taken by the United States and other countries around the world to control trafficking of ivory, will be a reduction in poaching of elephants in Africa, which will benefit the conservation of the African elephant. It is not possible to predict how many African elephants will be saved by revising the ESA 4(d) rule for the African elephant. We have an obligation, however, to do what we can to minimize the role of the U.S. market in the global market for African elephant ivory, including by prohibiting commercial import and significantly restricting commercial export and sale of ivory within the United States. We believe this will ultimately reduce poaching of elephants in Africa. Reduced poaching of elephants will not only benefit conservation of the African elephant but will also have positive impacts for the rangers and other law enforcement agents who work to protect them and for the people who benefit from the continued existence of African elephants and their role in the ecosystems in which they live. We believe that the negative economic impacts in the United States associated with the preferred alternative are outweighed by the cumulative, long-term, conservation benefits to the African elephant and the related benefits to humankind.

List of persons and agencies consulted

We are soliciting input through a public rule-making process.

**Rulemaking to Revise the 4(d) Rule for the African Elephant
Draft Economic Analysis**

Prepared by: Division of Economics, U.S. Fish and Wildlife Service

Executive Summary

The U.S. Fish and Wildlife Service has published a proposed rule to revise the 4(d) rule for the African elephant (50 CFR 17.40(e)). This document analyzes the economic impacts of three alternatives: *Alternative 1, the “no action” alternative* – Existing 4(d) rule remains in place unchanged; *Alternative 2, the preferred alternative* – Revise the 4(d) rule for the African elephant; and *Alternative 3, removal of the 4(d) rule for the African elephant*. Using the available data, we use reasonable assumptions to approximate the potential impact of each alternative. The Service solicits public comment on impacts to sales, percentage of revenue impacted, and the number of businesses affected to quantify these costs and benefits. The table below summarizes the potential impacts of each alternative.

Table 1. Summary of Potential Annual Economic Impacts

	Alternative 1, the “No Action” Alternative	Alternative 2, the Preferred Alternative (revise the 4(d) rule)	Alternative 3, Removal of the 4(d) Rule
Imports	No change. The 4(d) rule currently allows import of African elephants and African elephant parts and products (other than ivory and sport-hunted trophies) without an ESA permit if permit requirements in 50 CFR parts 13 and 23 are met. Ivory may be imported if it is a <i>bona fide</i> antique or it was registered with the Service prior to export.	Import of African elephants and African elephant parts and products (other than ivory and sport-hunted trophies) would continue to be allowed without an ESA permit if permit requirements in 50 CFR parts 13, 14, and 23 are met. Import of raw ivory would be prohibited, except for sport-hunted trophies. Import of worked ivory would be prohibited,	The African elephant, including its parts and products, would be subject to the general prohibitions and exceptions for threatened species, including prohibitions on import, export, and interstate and foreign commerce. Non-ivory African elephant products averaging about \$825,000 annually

	<p>[There is, however, a moratorium on import under the AfECA (except for sport-hunted trophies).] Sport-hunted trophies may be imported provided specific requirements are met. There are no limits on the number of trophies a hunter may import.</p>	<p>except for sport-hunted trophies and ivory that was taken from the wild prior to February 26, 1976 and is either contained in a musical instrument or is part of a travelling exhibition or a household move or inheritance, provided certain other conditions are met. Import of sport-hunted trophies would be limited to two per hunter per year.</p> <p>Hunting trophy shipments may decrease by 3-4 percent per year.</p>	<p>would no longer be imported. Importation of hunting trophies could continue (with no limits) but an ESA permit would be required for imports from Appendix-I populations.</p>
Exports	<p>No change. The 4(d) rule currently allows export of African elephants and African elephant parts and products (other than ivory and sport-hunted trophies) without an ESA permit if permit requirements in 50 CFR parts 13 and 23 are met. Worked ivory may be exported in accordance with permit requirements in 50 CFR parts 13 and 23. Raw ivory may not be exported for commercial purposes.</p>	<p>Export of raw and worked ivory would be prohibited except for qualifying antiques and ivory that was taken from the wild prior to February 26, 1976 and is either contained in a musical instrument or is part of a travelling exhibition or a household move or inheritance, provided certain other conditions are met.</p> <p>Export of qualifying antiques would continue. All other worked ivory exports that do not meet certain criteria would stop, resulting in an average estimated loss of about \$2.1 million in revenue (2 percent</p>	<p>Export of qualifying antiques would continue. All other exports would stop (unless they qualify for an ESA permit) resulting in an estimated average annual loss of \$2.1 million in revenue from ivory exports and \$120,000 in revenue from non-ivory exports.</p>

		of the declared value of worked ivory exports).	
Interstate and Foreign Commerce	No change. The 4(d) rule does not regulate activities in foreign commerce of interstate commerce in legally imported African elephant specimens.	Sale or offer for sale of ivory in interstate or foreign commerce would be prohibited except for qualifying antiques and certain manufactured items containing <i>de minimus</i> quantities of ivory. Decrease in domestic sales and foreign commerce involving individuals subject to U.S. jurisdiction is estimated to decrease by about 2 percent.	Sale or offer for sale of all African elephant specimens in interstate or foreign commerce would be prohibited, except for qualifying antiques. Decrease in domestic sales and foreign commerce involving individuals subject to U.S. jurisdiction is estimated to decrease by about 2 percent..
Benefits	None. The United States would continue to play a role as a destination and transit country for illegally traded elephant ivory.	Enforcement efforts would be facilitated and control of the domestic ivory market would improve. Would allow continued interstate commerce in non-ivory parts and products and certain items containing a small amount of worked ivory. Includes provisions for non-commercial movement of ivory in certain musical instruments, traveling exhibitions, and household moves or inheritances. These provisions would provide an economic benefit to a small segment of the population.	Enforcement efforts would be facilitated and control of the domestic ivory market would improve.

This document provides a general overview of the market for African elephant parts and products, with a focus on the African elephant ivory market in the United States. Potentially impacted markets include those that buy/sell African elephant ivory or other parts or products in interstate commerce within the United States and those that buy/sell worked African elephant ivory or other products for commercial export. Examples of products that contain worked ivory or are made entirely of worked ivory include cue sticks, knife handles, furniture inlay, jewelry, gun grips, artwork, and musical instrument parts. Non-ivory products include boots and other leather goods, jewelry made from elephant hair, bone carvings, skins, and others.

The African elephant ivory market within the United States is not large enough to have major data collections or reporting requirements, resulting in limited available data. Some import and export data are available from the Service's Office of Law Enforcement and Division of Management Authority. Also, the report *Tackling the Ivories: The Status of the US Trade in Elephant and Hippo Ivory* by D.F. Williamson in 2004 describes the foreign market through analysis of data from the Service's Law Enforcement Management Information System and describes the domestic market through review of eBay listings. A 2008 study by Esmond Martin and Daniel Stiles, *Ivory Markets in the U.S.*, surveys a number of retail establishments in major cities across the United States that trade in ivory products, including ivory from African elephants. On the whole, this information provides a general overview of the African elephant ivory market.

Alternative 1, the “No Action” Alternative

Under the “no action” alternative, the existing 4(d) rule for the African elephant (50 CFR 16.40(e)) would remain in place in its current form. Thus, any currently allowed imports, exports, and activities in interstate and foreign commerce would continue.

Import

Currently, there is a moratorium on the import of African elephant ivory other than sport-hunted trophies, established under the African Elephant Conservation Act and in place since 1989. Non-ivory African elephant products may be imported, however. **Table 2** shows the dollar value of non-ivory imports from 2007 to 2012.

Table 2. Declared Dollar Value of Cleared U.S. Imports of Non-Ivory African Elephant Parts and Products (Does not include live animals, scientific specimens, or trophies)	
Year	Total Declared Value
2007	\$496,934
2008	\$673,463
2009	\$819,807
2010	\$789,436
2011	\$1,133,207
2012	\$1,034,437
Annual Average	\$824,547

Source: U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System. Declared dollar value is the value assigned to the imported goods by the importer or the importer's agent and is typically less than retail value. The retail value is unknown.

Table 3 shows U.S. imports of non-ivory parts and products broken down by commercial and non-commercial trade. The commercial category represents items imported with the purpose code T (commercial). Items included in the non-commercial category include items imported with purpose codes E (educational) and P (personal). On average, 90 percent of non-ivory imports were for commercial purposes and represented 85 percent of declared value.

Table 3. U.S. Imports of Non-Ivory African Elephant Parts and Products: Commercial and Non-Commercial Imports (2007-2012)						
	Commercial Trade		Non-Commercial Trade		Total	
	Quantity	Value	Quantity	Value	Quantity	Value
2007	1,963	\$494,609	20	\$2,325	1,983	\$496,934
2008	4,672	\$632,395	262	\$41,068	4,934	\$673,463
2009	4,154	\$616,207	1,088	\$203,600	5,242	\$819,807
2010	5,346	\$564,909	877	\$224,527	6,223	\$789,436

2011	11,611	\$976,555	573	\$156,652	12,184	\$1,133,207
2012	6,695	\$947,812	658	\$86,625	7,353	\$1,034,437
Total	34,441	\$4,232,487	3,478	\$714,797	37,919	\$4,947,284
Annual Average	5,740	\$705,414	580	\$119,133	6,320	\$824,547

Note: There were 2 items imported for educational purposes in 2008, with a declared value of 0, and nine items imported for educational purposes in 2009, with a declared value of \$10,800. All other non-commercial imports during 2007-2012 were for personal use (purpose code P).

Source: U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System. Declared dollar value is the value assigned to the imported goods by the importer or the importer's agent and is typically less than retail value. The retail value is unknown.

Table 4 shows U.S. exports of non-ivory African elephant parts and products from 2007 to 2012. (There were no exports declared in 2007 or 2011.) The commercial category represents items exported with the purpose code T (commercial). Items included in the non-commercial category include items exported under purpose codes E (educational), P (personal), Q (exhibition), and S (scientific). The total declared value for non-commercial trade in 2012 (\$301,500) includes one item exported for exhibition purposes (code Q) valued at \$300,000.

Table 4. U.S. Exports of Non-Ivory African Elephant Parts and Products: Commercial and Non-Commercial Exports (2007-2012)						
	Commercial Trade		Non-Commercial Trade		Total	
	Quantity	Value	Quantity	Value	Quantity	Value
2008	27	\$3,925	11	\$11,000	38	\$14,925
2009	157	\$23,316	0	\$0	157	\$23,316
2010	11	\$4,890	3	\$0	14	\$4,890
2012	40	\$136,844	4	\$301,500	44	\$438,344
Total	235	\$168,975	18	\$312,500	253	\$481,475
Annual Average	59	\$42,244	5	\$78,125	63	\$120,369

Source: U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System. Declared dollar value is the value assigned to the imported goods by the importer or the importer's agent and is typically less than retail value. The retail value is unknown.

Table 5 shows that the number of shipments containing sport-hunted trophies imported from 2010 to 2012 ranged from 365 to 417 shipments. Over this 3-year period, the majority of shipments contained 2 or fewer trophies. **Table 6** shows that on average about 7 hunters per year imported more than 2 trophies during 2010 to 2013. These tables include hunting trophies imported both as “tusks” and as “trophies.”

Year	Total trophy shipments	Number of shipments with 2 or fewer trophies	Percentage of shipments with 2 or fewer trophies
2010	412	399	97%
2011	365	356	97%
2012	417	398	95%
Annual Average	398	384	96%

Source: U.S. Fish and Wildlife Service. 2014. Office of Law Enforcement, Law Enforcement Management Information System.

Year	Number of Hunters	Number of Tusks
2010	8	166
2011	2	44
2012	11	173
2013*	5	104
Total	26	487
Annual Average	7	18.7

Source: U.S. Fish and Wildlife Service. 2014. Office of Law Enforcement, Law Enforcement Management Information System. * 2013 data incomplete.

Export

Under current regulations, worked ivory, both antique and non-antique items, may be exported. Under Alternative 1, the “no action” alternative, this would not change. **Table 7** shows the declared value of exported worked African elephant ivory from 2007 to 2011, as obtained from the USFWS Office of Law Enforcement. From 2007 to 2011, the total declared

value varied widely from \$32.1 million to \$175.7 million. The declared value of non-antiques (less than 100 years old) ranged from \$607,000 to \$3.7 million annually during the same period. For this analysis, the “antique” category includes items that were 100 years old or older and the “non-antique” category includes any item less than 100 years old. It does not mean, however, that all of the items classified here as “antique” due to their age would qualify as antiques under the ESA. An item must meet other criteria, in addition to age, to qualify as an ESA antique. The information available to us allows us to identify items that were less than 100 years old (which therefore could not be considered “antique”), but does not allow us to determine whether the items that were 100 years or older would qualify as antiques under the ESA.

Year	Total Declared Value	Declared Value of Non-antiques	Non-antiques as Percent of total declared value
2007	\$175,695,165	\$3,728,908	2.1%
2008	\$38,253,493	\$2,475,588	6.5%
2009	\$102,238,755	\$607,069	0.6%
2010	\$32,083,052	\$2,666,334	8.3%
2011	\$115,426,908	\$832,004	0.7%
Annual Average	\$92,739,475	\$2,061,981	2.2%

Source: U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System. Declared dollar value is the value assigned to the imported goods by the importer or the importer’s agent and is typically less than retail value. The retail value is unknown.

Tables 8 and 9 show the quantity and declared dollar value of worked African elephant ivory exports categorized by item type, including: (1) ivory carvings; (2) ivory jewelry; (3) ivory piano keys and (4) pianos with ivory keys. **Table 8** shows that the total number of worked ivory items exported from 2007 to 2012 ranged from 591 to 1,925 annually, with a six-year total of 6,239 items exported and an annual average of 1,040 items. Ivory carvings accounted for over 75 percent of all items exported.

	Ivory Carvings	Ivory Jewelry	Ivory Piano Keys	Pianos with Ivory Keys	Total
2007	967	4	52	10	1,033
2008	334	4	244	9	591
2009	1,724	4	192	5	1,925
2010	911	0	104	9	1,024
2011	353	2	257	46	658
2012	393	3	596	16	1008
6-year total	4,682	17	1,445	95	6,239
6-year average	780	3	241	16	1,040

Source: U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System.

Table 9 shows the declared dollar value of worked African elephant ivory exports from 2007 to 2012. The annual total declared value of exports ranged from \$29.2 million to \$175.7 million with a six-year total of \$493 million and an annual average of about \$82 million. Ivory carvings accounted for over 99 percent of total declared value.

	Ivory Carvings	Ivory Jewelry	Ivory Piano Keys	Pianos with Ivory Keys	Total
2007	\$175,336,194	\$770	\$2,500	\$355,701	\$175,695,165
2008	\$37,654,133	\$360,000	\$42,350	\$197,010	\$38,253,493
2009	\$101,823,136	\$46,519	\$287,000	\$82,100	\$102,238,755
2010	\$31,815,151	\$0	\$35,000	\$232,901	\$32,083,052
2011	\$113,985,513	\$13,939	\$33,613	\$1,393,843	\$115,426,908
2012	\$27,598,867	\$8,200	\$153,949	\$1,488,500	\$29,249,516
6-year Total	\$488,212,994	\$429,428	\$554,412	\$3,750,055	\$492,946,889
6-year average	\$81,368,832	\$71,571	\$92,402	\$625,009	\$82,157,815

Source: U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System. Declared dollar value is the value assigned to the imported goods by the importer or the importer's agent and is typically less than retail value. The retail value is unknown.

Interstate and Foreign Commerce

Under Alternative 1, the “no action” alternative, there would be no change to currently allowed activities in interstates and foreign commerce involving African elephant specimens. We

have no data on activities in foreign commerce by individuals subject to U.S. jurisdiction. As noted earlier, comprehensive data for the domestic market are also unavailable. Williamson's 2004 report detailed a 4-month period in 2004 showing ivory for sale on eBay. The eBay listings averaged about 1,070 items for sale at any one time. Since that time, however, eBay has changed its policy on the listing of animal and wildlife products, including placing restrictions on the listing of ivory products. **Table 10** shows the results of a survey of major cities across the United States identifying retail establishments trading in worked ivory, including ivory from African elephants. The study does not identify all establishments trading in ivory but does give a general idea of the number of establishments and geographic scope. Although a precise estimate is not possible, it seems likely that most of these establishments would be classified as a small business.

Region	Area	Number of outlets with ivory	Number of items	Number of items per outlet
East	Boston and Cambridge	20	758	37.9
	New York City	124	11,376	91.7
	Washington DC	25	236	9.4
	Palm Beach	10	885	88.5
	West Palm Beach	14	529	37.8
	Greater Miami	11	865	78.6
	Atlanta	22	158	7.2
	Chicago	18	255	14.2
West	Dallas	49	322	6.6
	Houston	44	267	6.1
	Greater Phoenix	28	208	7.4
	Las Vegas	21	212	10.1
	San Francisco Bay Area	49	2,777	56.7
	Greater Los Angeles	170	2,605	15.3
	San Diego	29	684	23.6
	Oahu Island, Hawaii	23	1,867	81.2
	Total	657	24,004	36.5

Source: Martin and Stiles 2008

In March and April of 2014, one of the authors of this study conducted a follow-up survey in Los Angeles and San Francisco, California (Stiles 2015). He found a total of more than 1,250 ivory items offered for sale by 107 vendors in these two California cities, “with 777 items and 77 vendors in Los Angeles and well over 473 ivory items and 30 vendors in San Francisco.” While there were “significantly fewer vendors” offering ivory for sale, compared to the 2006-2007 survey, Stiles noted “a much higher incidence of what appears to be ivory of recent manufacture in California, roughly doubling from approximately 25% in 2006 to about half in 2014. In addition, many of the ivory items seen for sale in California advertised as antiques (i.e., more than 100 years old) appear to be more likely from recently killed elephants.”

Alternative 2, the Preferred Alternative

Under Alternative 2, the preferred alternative, the 4(d) rule for the African elephant would be revised. Under the proposed revisions, the number of trophies a hunter can import in a given year would be restricted, non-commercial import and export of certain worked ivory would be allowed only in specific, limited circumstances, and commercial and noncommercial export of qualifying antiques would continue to be allowed. Sale or offer for sale of ivory in interstate or foreign commerce would be prohibited, with limited exceptions for qualifying antiques and certain manufactured items containing a small (*de minimis*) quantity of ivory. This alternative includes a prohibition on take of live animals in the United States but does not otherwise impact current provisions for live animals, or parts and products other than ivory. It also allows, under specific conditions, noncommercial import and export of ivory contained in musical instruments or as part of a traveling exhibition or a household move or inheritance.

Import

Under Alternative 2, the preferred alternative, the number of hunting trophies a single hunter may import annually would be limited to two trophies per hunter per year. As shown in Tables 5 and 6, this may impact about 7 hunters and 3-4 percent of trophy shipments annually.

Import of African elephant ivory (other than sport-hunted trophies) would be prohibited, with limited exceptions for noncommercial import of worked ivory contained in musical instruments, as part of a traveling exhibition, or a household move or inheritance under specific conditions. This preferred alternative also allows for the noncommercial import of ivory for law enforcement purposes and genuine scientific purposes that would contribute to the conservation of the species. Commercial import of non-ivory African elephant products, averaging about \$820,000 annually (Table 2), would not be impacted.

Export

Under Alternative 2, the preferred alternative, export of ivory would be limited to qualifying antiques and certain worked ivory contained in musical instruments or as part of a traveling exhibition or a household move or inheritance under specific conditions. (Export of raw ivory would continue to be prohibited.) We do not have sufficient information to be able to quantify this impact. Some portion of the worked ivory classified here as antique due to its age, would likely not meet the ESA definition of antique and therefore could not be exported. The percentage of items classified as antique in Table 7 that would meet the ESA definition of antique is unknown. (Please see the discussion for Table 7 under Alternative 1.) We know that the declared value of worked ivory that was less than 100 years old averaged \$2.1 million from 2007 to 2011 and that these values represent 2.2 percent of total worked ivory exports, by declared value, during that period. Thus, we can estimate that, based on declared value, worked

ivory exports would decrease by about 2 percent annually based on the period from 2007 to 2011 (see Table 7) but understand that the impact may be greater (or less) based on the factors noted above.

Non-ivory African elephant products would continue to be exported under the same conditions as Alternative 1, the “no action” alternative. Therefore, no impact would occur to this market segment.

Interstate and Foreign Commerce

Sale or offer for sale of ivory in interstate or foreign commerce would be prohibited except for qualifying antiques and manufactured items that contain a small amount of ivory and meet certain criteria (i.e., the ivory was imported into the United State prior to January 18, 1990, or imported under a CITES pre-Convention certificate, the ivory is a fixed component of a larger item and is not the primary source of value of the item, the ivory is not raw, the item is not made wholly or primarily of ivory, the total weight of the ivory is less than 200 grams, and the item was manufactured before the effective date of the final rule). For this analysis, we assume that the percentage of non-antique worked ivory in the export market is similar to the domestic market. Assuming that the domestic market is similar to the export market, then non-antique worked ivory domestic sales would also decrease about 2 percent annually under the preferred alternative. Because we are proposing to allow commercial activities in interstate and foreign with certain items containing *de minimis* amounts of ivory, and many of these items would be precluded from export, it is possible that an even smaller percentage of the domestic market would be impacted compared to the export market. Certain commercial activities such as sale in interstate or foreign commerce of raw ivory and non-antique worked ivory, with the exception of

those items containing *de minimis* amounts of worked ivory mentioned above, would no longer be permitted. The Service solicits public comment to help quantify this impact.

Benefits

This preferred alternative would facilitate enforcement efforts within the United States and improve regulation of the U.S. market for elephant ivory. The United States continues to play a role as a destination and transit country for illegally traded elephant ivory. Alternative 2, the preferred alternative, would increase protection for African elephants, by increasing controls over the U.S. domestic ivory market and U.S. involvement in foreign ivory markets. This alternative would benefit the conservation of African elephants.

Alternative 3, Removal of the 4(d) Rule

Under Alternative 3, the 4(d) rule for the African elephant would be removed. As a result, African elephants, including African elephant parts and products, would be subject to the prohibitions and exceptions that apply for threatened wildlife in 50 CFR 17.31 and 17.32. These prohibitions include: take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; possession and other acts with unlawfully taken wildlife; sale and offer for sale in interstate or foreign commerce; and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity. Permits issued under 50 CFR 17.32 must be for “scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act.”

Import

We do not expect that removal of the 4(d) rule would significantly impact import of African elephant ivory because of the moratorium on the import of African elephant ivory other than sport-hunted trophies, established under the African Elephant Conservation Act and in place since 1989. Sport-hunted African elephant trophies could continue to be imported, although import of trophies from CITES Appendix-I populations would require ESA permits.

The import of non-ivory African elephant parts and products would be subject to the provisions for threatened wildlife in 50 CFR 17.31 and 17.32. We expect that most of the currently allowed imports of non-ivory parts and products would not qualify for an ESA permit and therefore the import of non-ivory African elephant products, averaging about \$820,000 annually, would no longer be allowed (Table 2).

Export

Under Alternative 3, export of African elephant parts and products, including ivory, would be prohibited without an ESA permit issued under 50 CFR 17.32, except for qualifying antiques, which are exempt from ESA permitting requirements and could continue to be exported. Export of non-ivory African elephant products, ranging in value from \$4,890 to \$438,344 annually during 2008-2012, would no longer be allowed (Table 4). As shown above in Table 7, the annual declared value of worked African elephant ivory exported from the United States averaged \$92,963,499 during 2007-2011. The declared value of “non-antique” (less than 100 years old) ivory averaged \$2.1 million from 2007 to 2011. As a result, we expect that, based on declared values, worked ivory exports would decrease by about 2 percent annually based on the period from 2007 to 2011 (Table 7). We note, however, that it is also likely that some portion of the items classified as “antique” in Table 7, based on their age alone, would not qualify as antiques under the ESA definition and therefore could not be exported. (Please see the

discussion for Table 7 under Alternative 1.) The percentage of these items that would not meet the ESA definition of antique is unknown.

Interstate and Foreign Commerce

With no 4(d) rule in place, as in Alternative 3, sale or offer for sale in interstate or foreign commerce of African elephant specimens including parts and products, except for qualifying antiques would be prohibited. Sales within a state (intrastate sales) would not be impacted and could continue (although the provisions in 50 CFR 23.55 include restrictions on intrastate sales). Assuming that the domestic market is similar to the export market, then non-antique worked ivory domestic sales would also decrease about 2 percent annually under this alternative. The Service solicits public comment to help quantify this impact to the domestic market.

Benefits

Removal of the 4(d) rule would facilitate enforcement efforts within the United States and improve regulation of the U.S. market for elephant ivory. The United States continues to play a role as a destination and transit country for illegally traded elephant ivory. Alternative 3 would increase protection for African elephants by increasing controls over the U.S. domestic ivory market and U.S. involvement in the global ivory market. This alternative would benefit the conservation of African elephants.

References

Martin, Esmond and Daniel Stiles. 2008. Ivory Markets in the U.S.

Stiles, Daniel. 2014. Elephant Ivory Trafficking in California, U.S.A.

U.S. Fish and Wildlife Service. 2014. Office of Law Enforcement, Law Enforcement Management Information System.

U.S. Fish and Wildlife Service. 2013. Office of Law Enforcement, Law Enforcement Management Information System.

Williamson, D.F. 2004. Tackling the Ivories: The Status of the US Trade in Elephant and Hippo Ivory.