



NOTICE TO THE WILDLIFE IMPORT/EXPORT COMMUNITY



February 26, 2014

Subject: Controls on Import, Export and Interstate Sale of Elephant Ivory and Other Products Made from ESA-listed Species

Background: U.S. Fish and Wildlife Service Director Dan Ashe has signed a [Director's Order](#) instructing agency staff to more strictly enforce existing restrictions on the commercial trade in elephant ivory. The order is the first in a series of administrative actions that the Service will take to stop the prolific illegal trade in ivory, rhino horn and other animal parts that is placing many of the world's most revered animals in crisis. These measures are called for in the National Strategy on Combating Wildlife Trafficking, which was signed by the President on February 11, 2014.

Effective immediately, the Order instructs Service employees to strictly implement and enforce two legal restrictions. The first is the African Elephant Conservation Act moratorium on the importation of raw and worked African elephant ivory. The second issue addressed in the Director's Order is the statutory requirements an item must meet to qualify as an "antique" under the Endangered Species Act (ESA) and thus be exempt from the law's prohibitions.

Action: Effective immediately:

(1) African elephant ivory, including antiques, may no longer be imported into the United States for any commercial purpose. The only African elephant ivory that may now be brought into the country with proper documentation is ivory that is:

- part of a lawfully taken sport hunted trophy
- imported by a federal, state or tribal government agency for law enforcement purposes
- imported for scientific purposes that contribute to elephant conservation
- worked ivory contained in personal items as part of a household move or inheritance that meets specific criteria
- worked ivory that is part of a musical instrument that meets specific criteria
- worked ivory imported as part of a traveling exhibition that meets specific criteria

(2) Anyone using the antique exception under the ESA to import, export or sell across state boundaries (interstate sale) any item made from or containing part of an endangered or threatened species will need to show documentation that:

- the item is at least 100 years old;
- was legally imported at a designated Customs "antique port"; and
- has not been subject to certain types of repairs or modifications.
- Additionally, the particular species has to be identified on the documentation.

Rigorous Service enforcement of these "antique" criteria will affect the importation and interstate sale of Asian elephant ivory as antiques, the export of both African and Asian elephant ivory under the ESA's antiques exemption, as well as the international trade and interstate sale of items made from any foreign species listed as endangered or threatened. Interstate sale of African elephant ivory will remain legal at this time, but the Service is pursuing the regulatory changes needed to address such commerce.

Copy:
U.S. Fish & Wildlife Service
U.S. Department of the Interior
Wildlife Inspector
U.S. Department of the Interior
Wildlife Inspector

The following are prohibited:

- Commercial import of African elephant ivory
- Export of non-antique African and Asian elephant ivory (*except in exceptional circumstances as permitted under the ESA*)
- Interstate commerce (sale across state lines) of non-antique African and Asian elephant ivory (*except in exceptional circumstances as permitted under the ESA*)
- Sale, including intrastate sale (sale within a state), of African and Asian elephant ivory *unless* the seller can demonstrate that the ivory was lawfully imported prior to listing in CITES Appendix I (1990 for African elephant; 1975 for Asian elephant) or under a CITES pre-Convention certificate or other exemption document

Antique Dealers

How is “antique” defined under the ESA?

Specimens (e.g., elephant ivory, hair or leather) defined as “antique” may be exempt from standard prohibitions on import, export and interstate sale. To qualify for the “antique” exemption, the importer, exporter or seller must prove that the specimen:

- Is 100 years or older;
- Is composed in whole or in part of an ESA-listed species;
- Has not been repaired or modified with any such species on or after December 28, 1973; and
- Is being or was imported through an endangered species antique port.

How will trade in antiques be impacted?

Eliminating the broad exceptions to the 1989 AECA moratorium will prohibit the commercial import of antiques made of African elephant ivory. Import of antiques will only be allowed for certain items not destined for sale, including household effects, musical instruments, museum specimens and other noncommercial items traveling on a CITES musical instrument certificate or traveling exhibition certificate.

Commercial and noncommercial import of antiques made out of other endangered species, such as Asian elephant or rhinoceros, will continue to be allowed provided the importer can prove the identification of the wildlife species at the time of import and the specimen meets the definition of an antique under the ESA.

Antiques made out of endangered species that are already here in the United States may continue to be sold in interstate commerce without an ESA permit provided the seller can prove that the specimen meets the definition of an antique under the ESA.

Where can antiques made of ESA-listed species be imported?

These antiques can only be imported at the following ports: Boston, Massachusetts; New York, New York; Baltimore, Maryland; Philadelphia, Pennsylvania; Miami, Florida; San Juan, Puerto Rico; New Orleans, Louisiana; Houston, Texas; Los Angeles,

California; San Francisco, California; Anchorage, Alaska, Honolulu, Hawaii; and Chicago, Illinois.

Current owners of elephant ivory, rhino horn, and other items derived from these species

How will ownership and use of personally owned item be affected?

Personal possession of elephant ivory and other materials made from endangered or threatened species that were legally acquired will remain legal.

Worked African elephant ivory imported for personal use as part of a household move or as an inheritance and worked African elephant ivory imported as part of a musical instrument will continue to be allowed provided the worked ivory has not subsequently been transferred from one person to another person in pursuit of financial gain or profit and the item is accompanied by a valid CITES document. The import of raw African elephant ivory, other than sport-hunted trophies, is prohibited.

Import and export of other ESA-listed species, such as Asian elephant or rhinoceros, for noncommercial purposes either with an ESA permit or if the specimen qualifies as pre-ESA or as an antique under the ESA may continue.

Commercial export and interstate commerce of all non-antique African elephant ivory will be prohibited without an ESA permit. The export and sale in interstate commerce of non-antique specimens of other ESA-listed species continues to be prohibited without an ESA permit.

With finalization of the amended "use-after-import" provisions in our CITES regulations, species listed in CITES Appendix I or in Appendix II with an annotation for noncommercial purposes (such as African and Asian elephant or one of the species of rhinoceros) may only be used for noncommercial purposes unless it can be proved that the specimen was imported prior to the restrictive listing.

16 U.S. CODE § 5305A - PROHIBITION ON SALE, IMPORTATION, OR EXPORTATION OF PRODUCTS LABELED OR ADVERTISED AS RHINOCEROS OR TIGER PRODUCTS

(a) Prohibition

A person shall not sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

(a) Prohibition

A person shall not sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for human consumption or application containing,

or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

(b) Penalties

(1) Criminal penalty

A person engaged in business as an importer, exporter, or distributor that knowingly violates subsection (a) of this section shall be fined under title 18, imprisoned not more than 6 months, or both.

(2) Civil penalties

(A) In general

A person that knowingly violates subsection (a) of this section, and a person engaged in business as an importer, exporter, or distributor that violates subsection (a) of this section, may be assessed a civil penalty by the Secretary of not more than \$12,000 for each violation.

(B) Manner of assessment and collection

A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under the Endangered Species Act of 1973 [[16 U.S.C. 1531](#) et seq.] may be assessed and collected under section 11(a) of that Act ([16 U.S.C. 1540 \(a\)](#)).

(c) Products, items, and substances

Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section or any regulation issued under this section **shall be subject to seizure and forfeiture to the United States.**