

**Questions and Answers about Director's Order No. 210
Administrative Actions to Strengthen U.S. Trade Controls for
Elephant Ivory, Rhinoceros Horn, and Parts and Products of other ESA-listed Species**

What does the Director's Order do?

The Order instructs U.S. Fish and Wildlife Service personnel to strictly enforce existing restrictions on the commercial trade of elephant ivory and on the import, export and sale of items made from other protected species under the “antiques exception” of the Endangered Species Act (ESA).

What is the ESA antiques exception?

Under the ESA, the import, export and interstate sale (sale across state lines) of listed species or their parts is prohibited without an ESA permit except for items that qualify as “antique”.

To qualify as antique, the importer, exporter or seller must show that the item meets all of these criteria:

- It is 100 years or older;
- It is composed in whole or in part of an ESA-listed species;
- It has not been repaired or modified with any such species after December 27, 1973; and
- It is being or was imported through an endangered species “antique port.”

This strict enforcement of the ESA applies to items made from rhinoceros, sea turtle and any other ESA-protected species.

Can I import antique items containing African elephant ivory for commercial purposes?

No. The Service no longer allows *any* commercial importation of African elephant ivory. This prohibition, which was originally established via the 1989 African Elephant Conservation Act (AECA) moratorium, will apply even to items that qualify as antiques under the ESA.

Why did the Service issue this Order?

The changes are necessary for the Service to protect populations of elephants and other endangered or threatened species that are subject to illegal trade. Poaching and illegal trade have been decimating African elephant and rhinoceros populations in recent years. Traffickers have been claiming that elephant ivory that has been poached and illegally exported from the country of origin is ‘antique’, sometimes even staining it to make it look old. The changes in this Order are among a set of administrative actions specifically called for under the National Strategy on Combating Wildlife Trafficking, which was issued by President Obama on February 11, 2014.

Will any imports of African elephant ivory be allowed under the AECA moratorium?

Yes. The AECA itself authorized the continued importation of legally acquired sport-hunted trophies with proper documentation. We will continue to allow the import of sport-hunted trophies and certain other types of non-commercial imports.

What African elephant ivory can still be imported?

The following can still be imported:

- Raw or worked African elephant ivory imported by a federal, state or tribal agency for law enforcement purposes
- Raw or worked African elephant ivory imported for scientific purposes that will contribute to the conservation of African elephants
- Worked African elephant ivory imported for personal use as part of a household move or an inheritance that meets specific criteria (see below)
- Worked African elephant ivory imported as part of a musical instrument that meets specific criteria (see below)
- Worked African elephant ivory imported as part of a traveling exhibition that meets specific criteria (see below)
- African elephant ivory as part of a personal sport-hunted trophy

Why is the Service allowing these limited imports to continue, but restricting the importation of antiques made from African elephant ivory?

The United States is a market for objects made from African elephant ivory, which drives increasing poaching of wild elephants. The Service has determined that it must take every administrative and regulatory action to cut off import of raw and worked elephant ivory where that importation is for commercial purposes. Allowing imports for law enforcement and scientific purposes is in line with the Service's mission to help conserve African elephants and stop trafficking in African elephant ivory. The other limited exceptions allow movement into the United States legally possessed African elephant ivory that predates the listing under the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) for personal use as part of a household move or inheritance, musical performances, and traveling exhibitions. Each of these types of import must meet specific criteria. And unlike the commercial antiques trade, none of these types of imports has been used by smugglers to "cover" trafficking in newly poached ivory.

How can worked African elephant ivory be imported for personal use?

You may only import worked African elephant ivory for personal use as part of a household move or as part of an inheritance provided that the ivory was legally acquired before February 26, 1976; the ivory has not subsequently been transferred from one person to another person in pursuit of financial gain or profit since February 26, 1976; and the item is accompanied by a valid Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate.

How can worked African elephant ivory be imported as part of a musical instrument?

You may import worked African elephant ivory as part of a musical instrument provided that the ivory was legally acquired before February 26, 1976; the ivory has not subsequently been transferred from one person to another person in the pursuit of financial gain or profit since February 26, 1976; the person or group qualifies for a CITES musical instrument certificate; and the musical instrument containing elephant ivory is accompanied by a valid CITES musical instrument certificate or an equivalent CITES document that meets the requirements of CITES Resolution Conf. 16.8.

How can worked African elephant ivory be imported as part of a traveling exhibition?

Worked African elephant ivory may be imported as part of a traveling exhibition, such as a museum or art show, provided that the ivory was legally acquired prior to February 26, 1976; the worked elephant ivory has not subsequently been transferred from one person to another in the pursuit of financial gain or profit since February 26, 1976; the person or group qualifies for a CITES traveling exhibition certificate; and the item containing elephant ivory is accompanied by a valid CITES traveling exhibition certificate or an equivalent CITES document that meets the requirements of CITES Resolution Conf. 16.8.

Can raw African elephant ivory be imported for personal use, as a musical instrument, or as part of a traveling exhibition?

No. Raw African elephant ivory can only be imported as part of a personal sport-hunted trophy.

What is an endangered species antique port?

In establishing the antique exception under the ESA, Congress directed what was then the U.S. Customs Service to identify specific ports of entry where antiques made from endangered and threatened species can be imported. There are 13 of these locations: 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.

What are the requirements to import an antique made from an ESA-listed species?

- ESA antiques may only be imported at a port designated for the import of ESA antiques.
- The import of ESA antiques requires the filing of a Declaration for Import or Export of Wildlife (Form 3-177) with documentation demonstrating that the item meets the ESA exception.
- For ESA antiques made from species that are also listed under CITES, the importer or the importer's agent must file Form 3-177 and all required documentation directly with the Service.

- For ESA antiques made from species that are not listed under CITES, the importer or the importer's agent may file Form 3-177 and all accompanying documentation with the U.S. Customs and Border Protection (CBP) Port Director. CBP will forward all documentation to the Service for a legal determination prior to release. The importer or the importer's agent may also file directly with the Service and provide the necessary clearance to CBP.
- The commercial import of ESA antiques must meet all licensing and fee requirements for wildlife imports and exports.
- The import of ESA antiques made from species that are also listed under CITES requires a pre-Convention certificate issued by the CITES Management Authority of the (re)exporting country as part of the declaration
- The import of ESA antiques does not require an ESA import permit.
- The importer must provide documented evidence of species identification and age to demonstrate that the article qualifies as an ESA antique. This may include a qualified appraisal, documents that provide detailed provenance, and/or scientific testing. Notarized statements or affidavits by the importer or a CITES pre-Convention certificate alone are not necessarily adequate proof that the article meets the ESA exception.

What are the requirements to export an antique made from an ESA-listed species?

- ESA antiques may only be exported at a Service designated port or at a port authorized under a designated port exception permit.
- The export of ESA antiques must meet all of the Service's standard declaration, license, fee, notification, and clearance requirements for wildlife trade. CBP is not involved in the export of such antiques.
- The export of ESA antiques does not require an ESA export permit.
- The export of ESA antiques from species that are also listed under CITES requires a pre-Convention certificate issued by the U.S. CITES Management Authority as part of the export declaration package.
- The exporter must prove that the antique article had been previously imported and met all of the criteria for import under the ESA antique exception.

How does the U.S. importer document the identification of the species used in an ESA antique?

The person claiming the benefit of the ESA antique exception must definitively prove the identity of the species of which the article is composed in whole or in part. Such proof can be in the form of bona fide DNA analysis, a qualified appraisal, or other documentation that definitively demonstrates the identification of the species through a detailed provenance of the article.

How does the U.S. importer document the age of an ESA antique?

The person claiming the benefit of the ESA exception must definitively prove that the article is not less than 100 years of age. Such proof can be in the form of bona fide testing using scientifically approved aging methods by a laboratory or facility accredited to conduct such tests,

a qualified appraisal, or another method that documents the age by establishing the origin of the article. The provenance may be determined through a detailed history of the article, including but not limited to family photos, ethnographic fieldwork or other information that authenticates the article and assigns the work to a known period of time or, where possible, to a known artist.

How does the U.S. exporter or seller within the United States document that their article meets the ESA exception for antiques?

The burden of proof is on the exporter or seller to show that the antique article was previously imported and met all of the criteria under the ESA exception. See Section 2 above for the requirements to import an article made from an ESA-listed species and the type of documentation that was required upon import. Notarized statements or affidavits by the exporter or seller, or a CITES pre-Convention certificate alone are **not** adequate proof that the article meets the ESA exception.

What will the Service accept as a qualified appraisal?

An appraisal submitted as documentary evidence of an article's eligibility under the ESA antique exception must meet the following criteria:

- The person executing the appraisal either has earned an appraisal designation from a recognized professional appraiser organization for demonstrated competency in appraising the type of property being appraised or can demonstrate verifiable education and experience in assessing the type of property being appraised.
- The person executing the appraisal is not the importer, exporter, buyer, recipient or seller of the article; does not benefit from the results of the appraisal (other than for the cost of the appraisal); is not a party to any of the transactions associated with the article (including any person acting as an agent for the transaction); is not an employee of any business that is a party to the transaction; and is not related to the person claiming the exception.
- Facts we will examine in determining the reliability of the appraisal:
 - A description of the article in sufficient detail for a person who is not generally familiar with the type of article to determine that the appraisal is about the article in question.
 - The name and address of the qualified appraiser, or if the appraiser is a partner, an employee, or an independent contractor engaged by a person other than the person claiming the exception, the name and address of the partnership or the person who employs or engages the appraiser.
 - The qualifications of the appraiser who signs the appraisal, including the background, experience, education, and any membership in professional appraiser associations.
 - The date on which the article was appraised.
 - The scientific method in detail used to determine the age or species.
 - Descriptive information on the article including but not limited to: the size of the article; the medium; the artist or culture; approximate date the article was created; and a professional quality image of the article.
 - A detailed history of the article including proof of authenticity.

- The facts on which the appraisal was based including analyses of similar works by the artist on or around the creation date.

What articles do not qualify for the antique exception under the ESA?

- Articles that are less than 100 years old.
- Articles that are not composed in whole or in part of an ESA-listed species.
- Articles with repairs or modifications made on or after December 28, 1973, to the specific part or component of the article that is made of the ESA-listed species regardless of the age or origin of the parts used to repair or modify the specimen.¹
- Articles that have been repaired with the addition of any part of the ESA-listed species or modified with the addition of any part of the ESA-listed species on or after December 28, 1973 regardless of the age or origin of the parts used to repair or modify the specimen.
- Articles that were imported prior to the creation of designated ports for ESA antiques (September 22, 1982).
- Articles that are, or were, imported on or after September 22, 1982 at a port that was not designated for ESA antiques.
- Articles that were created in the United States and never imported.

How will rigorous enforcement of the criteria for the ESA antiques exception affect import, export and interstate sale of African elephant ivory?

As noted previously, commercial imports of African elephant ivory antiques are prohibited under the AECA moratorium and will no longer be allowed under *any* circumstance.

Under a special rule that has not yet been revoked, items made from African elephant ivory can still be sold across State lines and exported whether they qualify for the ESA antiques exception or not. ***We are working on the regulatory action needed to change this regulation.*** In the meantime, exporters of worked African elephant ivory must comply with CITES requirements and be able to document that the item is made from African (rather than Asian) elephant ivory. Such proof can be in the form of bona fide DNA analysis, a qualified appraisal, or other documentation that definitively demonstrates the identification of the species through a detailed provenance of the article.

How will rigorous enforcement of the criteria for the ESA antiques exception affect import, export and interstate sale of Asian elephant ivory or products made from other ESA-listed species?

The person engaging in these activities will need to show that the item meets all of the ESA criteria for antiques.

What are the penalties for violating the ESA?

¹ Items with repairs or modifications to parts or components of the item not made from an ESA-listed species may be entitled to the exception if all other requirements are met. Items that have been repaired or modified prior to December 28, 1973 may also be entitled to the exception if all other requirements are met.

The maximum penalty for violating the ESA is one year in prison and a \$100,000 fine for an individual, \$200,000 for an organization. Those who engage in illegal wildlife trade under the ESA may also face prosecution under the Lacey Act's anti-trafficking provisions (maximum penalty of 5 years in prison and fines of \$250,000 for an individual or \$500,000 for an organization).

Is it illegal to create or submit false paperwork to claim that an item qualifies as antique under the ESA antique exception?

Yes. The Lacey Act makes it illegal to produce or submit any false record, account, label for, or false identification of wildlife being transported in interstate or international commerce (maximum penalty 5 years in prison and fines of \$250,000 for an individual, \$500,000 for an organization). Making false statements and using false documents violates 18 U.S.C. 1001 (maximum penalty of 5 years in prison and fines of \$250,000 for an individual, \$500,000 for an organization).