



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



DIRECTOR'S ORDER NO. 210, Amendment 3

Subject: Administrative Actions to Strengthen U.S. Trade Controls for Elephant Ivory, Rhinoceros Horn, and Parts and Products of Other Species Listed Under the Endangered Species Act (ESA)

This amends Director's Order 210 (published February 25, 2014, and amended May 15, 2014 and July 31, 2015), in line with recent revisions to the Endangered Species Act (ESA) 4(d) rule for the African elephant, as follows:

Action 1: Replaces the acronym "AECA" with "AfECA" throughout for consistency with outreach materials and the final revised ESA 4(d) rule for the African elephant.

Action 2: Revises Section 2, subsection b., paragraphs (3), (4), and (5) by removing the requirement that the ivory has not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014, and adding to (4) and (5) the possibility of using an equivalent Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) document and the need for items to be securely marked or uniquely identified, as shown below:

"(3) Worked African elephant ivory imported for personal use as part of a household move or as part of an inheritance, provided that the worked elephant ivory:

- Was legally acquired prior to February 26, 1976; and
- ~~Has not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014; and~~
- The item is accompanied by a valid Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate.

(4) Worked African elephant ivory imported as part of a musical instrument, provided that the worked elephant ivory:

- Was legally acquired prior to February 26, 1976;
- ~~Has not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014;~~ The person or group qualifies for a CITES musical instrument certificate ~~or an equivalent CITES document;~~
- The musical instrument containing elephant ivory is accompanied by a valid CITES musical instrument certificate or an equivalent CITES document that meets all of the requirements of CITES Resolution Conf. 16.81; and
- ~~The musical instrument is securely marked or uniquely identified so~~

authorities can verify that the certificate or equivalent CITES document corresponds to the musical instrument in question.

(5) Worked African elephant ivory imported as part of a travelling exhibition, provided that the worked elephant ivory:

- Was legally acquired prior to February 26, 1976;
- ~~Has not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014;~~ The person or group qualifies for a CITES travelling exhibition certificate or an equivalent CITES document;
- The item containing elephant ivory is accompanied by a valid CITES travelling exhibition certificate or an equivalent CITES document that meets the requirements of 50 CFR 23.49; and
- The item containing elephant ivory is securely marked or uniquely identified so authorities can verify that the certificate or equivalent CITES document corresponds to the item in question.

Action 3: Revises paragraphs 2, 4, 5, 6, and 7 of Appendix 1 as follows:

Revises the last bullet under paragraph 2, to read as follows:

- “The importer must provide **documented** evidence of species identification and age to demonstrate that the article qualifies as an ESA antique. This can include a qualified appraisal, documents that provide detailed provenance, and/or scientific testing. The Service considers this to be a high bar, ~~particularly as it relates to the import of African elephant ivory (because the AECA moratorium prohibits the import of most African elephant ivory, including most antiques).~~ 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.”

Removes the word “definitively” from paragraphs 4 and 5, and replaces the word “origin” with “provenance” in paragraph 5, as follows:

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

The person claiming the benefit of the ESA antique exception must **definitely** 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 **definitely** demonstrates the identification of the species through a detailed provenance of the article.

5. How does the U.S. importer document the age of the 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 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 provenance of the article. The **origin 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.”

Inserts the word “necessarily” into paragraph 6 for consistency with text in paragraph 2, as follows:

“6. 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 meets the criteria under the ESA exception. Notarized statements or affidavits by the exporter or seller, or a CITES pre-Convention certificate alone, are not **necessarily** adequate proof that the article meets the ESA exception.”

Revises a sentence under the third bullet in paragraph 7, to read as follows:

- “The scientific, **or other**, method in detail used to determine the age or species.”

/sgd/ Stephen Guertin
DEPUTY DIRECTOR

Date: July 18, 2016