

Revision of the **African** elephant rule under
section 4(d) of the Endangered Species Act (50 CFR 17.40(e))

Finding of No Significant Impact

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Preparing Office

U.S. Fish and Wildlife Service
Division of Management Authority

DECISION RECORD
Environmental Assessment
and Finding of No Significant
Impact
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17.40{e}))

The African elephant was listed as threatened under the Endangered Species Act (Act, ESA), 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). Considering the rise in international trade of live elephants, particularly of wild-sourced elephants, the Service reevaluated the provisions of the regulations that were issued under section 4(d) of the ESA for the African elephant. On November 17, 2022, the Service published a proposed rule to revise the 4(d) rule (87 FR 68975). The proposed rule outlined measures that are necessary and advisable for the current conservation needs of the species, based on the evaluation of the current threats to the African elephant. The purposes outlined in the proposed rule were threefold: To increase protection for African elephants in light of the recent rise in international trade of live African elephants by establishing ESA enhancement permit requirements for international trade in live elephants and specific enhancement requirements for the import of wild-sourced elephants, as well as requirements to ensure that proposed recipients of live African elephants are suitably equipped to house and care for them; to clarify the existing enhancement requirement during the evaluation of an application for a permit to import African elephant sport-hunted trophies; and to incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies (with limited exception). A draft Environmental Assessment (EA),

which included a draft economic analysis, was released concurrently with the proposed 4(d) rule and both were available for public comment for a total of 120 days. The original public comment period was for 60-days and was extended an additional 60-days to give the public and stakeholders an additional opportunity to provide comments.

The National Environmental Policy Act (NEPA) recognizes "the profound impact of man's activity on the interrelations of all components of the natural environment" and calls for the federal government to use all practical means and measures to, among other things, "create and maintain conditions under which man and nature can exist in productive harmony." The Council on Environmental quality (CEQ) and the Department of the Interior (DOI) have developed regulations implementing NEPA. CEQ regulations, 40 CFR 1500-1508, require that federal agencies consider the potential for a proposed federal action to have direct, indirect, or cumulative effects on the quality of the human environment. The "human environment" is interpreted to include "the natural and physical environment and the relationship of people with that environment" (40 CFR 1508.14). "Effects" includes ecological, aesthetic, historic, cultural, economic, social, or health effects (40 CFR 1508.8). 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 CEQ 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 as well as within the United States.

In preparing the EA, the Service explored whether potential impacts rose to the level of significance as required by NEPA, including: 1) impacts to captive African elephants in the United States; 2) economic impacts in the United States resulting from restrictions on import, export, and interstate and foreign commerce; 3) impacts to U.S. sport hunters; and 4) transboundary impacts. The EA provided evidence for determining whether to prepare an Environmental Impact Statement (EIS) or a statement of "Finding of No Significant Impact" (FONSI).

The EA analyzed the environmental and economic impacts of the “no action” alternative (i.e., maintaining the 4(d) rule as it is currently written), the Service’s preferred alternative (i.e., revision of the 4(d) rule for the African elephant), and of the removal of 50 CFR 17.40(e)(2) and requirement of CITES Category One designation alternative (i.e., removing the exceptions of the 4(d) rule relating to live African elephants and parts and products other than ivory and sport-hunted trophies and requiring a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation for certain imports).

We have selected the preferred alternative (i.e., revision of the 4(d) rule for the African elephant) because it will ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species and that live African elephants are well cared for, so that any domestic demand for live African elephants enhances the conservation of the species and does not contribute to the decline of the species in the wild. In addition, this alternative clarifies the enhancement requirement for the import of African elephant sport-hunted trophies and receiving information from the range countries and will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not contribute to the decline of the species. Clarifying the enhancement standards for the import of African elephant sport-hunted trophies will also increase transparency with stakeholders in the decision-making process. In order to support U.S. African elephant conservation efforts, this alternative will allow certain types of imports only from countries that have achieved a Category One designation under the CITES National Legislation Project, with limited exception, which is accomplished by meeting the basic requirements to implement CITES through the Party’s adoption of national laws to implement the treaty. These measures will affect implementation in foreign countries of management measures that enhance African elephant conservation.

The Service received 138,668 comments in response to the proposed rule, including 4 letter writing campaigns with more than 111,606 signatures. Counting each of the letter-writing campaigns as one substantive comment, approximately 600 of the comments received were substantive. The Service received comments from individuals, hunting organizations, conservation/environmental non-governmental organizations, range countries, and concerned citizens. A summary of and responses to public comments and recommendations related to the draft EA are provided in the EA under *Response to Comment on the Draft EA*.

Commenters raised concerns about the economic impacts of increased regulation and how it will impact African elephant conservation in range countries. The Service prepared an economic analysis, which is attached to the EA. The final EA (including the economic analysis) and the final rule revising the 4(d) rule for the African elephant, made available concurrently with this FONS[, have addressed these comments.

The revised 4(d) rule allows the Service to adopt measures that are necessary and advisable for the current conservation needs of the species, based on the evaluation of the current threats to the African elephant. The revision of the 4(d) rule is not expected to result in significant effects to the human environment within the meaning of NEPA.

Based on a review and evaluation of the information contained in the EA and in the final rule, it is my determination that the final rule revising the ESA 4(d) rule for the African elephant is not a major federal action that will have a significant effect on the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an Environmental Impact Statement is not required.



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