

Dated: November 13, 2017.

Pamela H. Patenaude,

Deputy Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-IA-2017-N116;
FXIA16710900000-XXX-FF09A30000]

Issuance of Import Permits for Zimbabwe Elephant Trophies Taken on or After January 21, 2016, and on or Before December 31, 2018

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has made a finding that the killing of African elephant trophy animals in Zimbabwe, on or after January 21, 2016, and on or before December 31, 2018, will enhance the survival of the African elephant. Applications to import trophies hunted during this time period will be considered to have met the enhancement requirement, unless we issue a new finding based on available information. The Service may replace this finding, without any notification in the **Federal Register**, at any time that this finding no longer reflects the available information consistent with the regulatory requirements. In reviewing each application received for import of such specimens, the Service evaluates the information provided in the application, as well as other information available to the Service on the status of the elephant population and the management program for elephants in the country to ensure that the program is promoting the conservation of the species. Each application to import sport-hunted elephant trophies must also meet all other applicable permitting requirements before it may be authorized. This determination does not affect previous determinations by the Service regarding trophy animals taken before January 21, 2016.

DATES: This finding is made November 17, 2017.

ADDRESSES: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041-3803; fax (703) 358-2280; or email DMAFR@fws.gov.

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, (703) 358-2104 (telephone); (703) 358-2280 (fax); or DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION:

Background

The African elephant (*Loxodonta africana*) is listed as threatened under the Endangered Species Act of 1973, as amended (ESA or Act; 16 U.S.C. 1531 *et seq.*), on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)). It is also regulated under the provisions of section 4(d) of the Act (known as a “section 4(d) rule”) with a rule found at 50 CFR 17.40(e). The section 4(d) rule includes specific requirements for the import of sport-hunted trophies. Under § 17.40(e)(6)(i)(B), in order for the Service to authorize the import of a sport-hunted elephant trophy, the Service must find that the killing of the trophy animal will enhance the survival of the species in the wild (known as an “enhancement finding”).

The Zimbabwe elephant population, along with elephant populations in Botswana, Namibia, and South Africa, are also included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the exclusive purpose of allowing certain trade subject to annotation, including trade in hunting trophies for noncommercial purposes. All specimens not included in the annotation are deemed Appendix I specimens, and trade in them is regulated accordingly. On August 22, 1997, the U.S. Fish and Wildlife Service (Service) published a proposed rule announcing decisions by the Conference of the Parties to CITES and seeking comment on whether the United States should enter a reservation for any of the species that had been listed on CITES Appendices I and II (62 FR 44627). We discussed how the populations of African elephants in Zimbabwe, Botswana, and Namibia had been down-listed from CITES Appendix I to Appendix II and noted that, because African elephants are listed under the ESA as threatened, the African elephant section 4(d) rule found at 50 CFR 17.40(e) would continue to apply. This rule required that we find that the killing of the animal whose trophy was intended for import would enhance the survival of the species before a sport-hunted trophy could be imported. We also stated that, in making the required enhancement finding for the import of sport-hunted trophies, the Service must review the status of the elephant

population and the total management program for the elephant in each country to ensure the program is promoting the conservation of the species.

The preamble to the 1997 proposed rule noted that positive enhancement findings for the countries of Zimbabwe, Botswana, and Namibia had been made and would remain in effect until the Service found that the conditions of the section 4(d) rule are no longer met and published notice of a changed finding in the **Federal Register**. On May 18, 2001, we published a final rule again announcing decisions made at a meeting of the Conference of the Parties to CITES, including the decision to down-list the South African population of African elephants from CITES Appendix I to Appendix II (66 FR 27601). We again discussed the import requirements for African elephant sport-hunted trophies and stated that the enhancement finding for South African elephants would remain in effect until the Service found that conditions of the rule are no longer met and published notice of a changed finding in the **Federal Register**. The U.S. District Court for the District of Columbia, in *Safari Club International, et al. v. Jewell, et al.*, 213 F. Supp. 3d 48 (D.D.C. Sept. 30, 2016), has held that the Service created a binding duty on itself when it stated in the preamble of the 1997 proposed rule that it would publish notice in the **Federal Register** before making a change in its 1997 enhancement finding for Zimbabwe, and that the Service then violated this commitment when it published the **Federal Register** notice on May 12, 2014, several weeks after making an interim negative enhancement finding for Zimbabwe on April 4, 2014. As remedy, the Court ordered that the effective date of the 2014 enhancement finding is the date of the **Federal Register** notice, May 12, 2014, meaning that trophies taken on or before May 11, 2014 were allowed to meet the enhancement requirement. We did not intend to create a legal duty to publish changed enhancement findings through these **Federal Register** preamble statements.

On June 6, 2016, the Service amended the African elephant section 4(d) rule (81 FR 36388). With this amendment, ESA permits are required to import all African elephant sport-hunted trophies, including those from the CITES Appendix II populations of Zimbabwe, Botswana, Namibia, and South Africa. Because all imports will be accompanied by a threatened species permit evaluated through the ESA permit application process found at 50 CFR 17.32(a), we will no longer publish

notice of changed enhancement findings for African elephant sport-hunted trophies in the **Federal Register**. In the future, when there are subsequent changes to the determination, the individual applicant will be notified regarding whether his or her permit application was granted or denied, including a brief statement of the grounds for any denial. We may also post information on the import of African elephant hunting trophies on the Service's Web page (www.fws.gov/international), as appropriate and consistent with applicable laws and regulations.

Import Suspension

On April 4, 2014, the Service announced an interim suspension of imports of sport-hunted elephant trophies taken in Zimbabwe during the 2014 season. We revised this finding on April 17, 2014, primarily to clarify that the suspension applied only to elephants hunted on or after April 4, 2014. This determination was announced in the **Federal Register** on May 12, 2014 (79 FR 26986). Our decision to establish an interim suspension of imports of elephant trophies from Zimbabwe was due to having insufficient information on the status of elephants in Zimbabwe and on Zimbabwe's current elephant management program to make an enhancement finding. On July 17, 2014, the Service found that the import of elephant trophies taken in Zimbabwe in 2014 on or after April 4, 2014, would be suspended. We revised this finding on July 22, 2014, to make non-substantive corrections and announced this determination in the **Federal Register** on July 31, 2014 (79 FR 44459). The July 17, 2014, decision to uphold the April 4, 2014, suspension was due to the Service being unable to make an enhancement finding even after receiving additional materials from the Zimbabwe Parks and Wildlife Management Authority (ZPWMA) and others. On March 26, 2015, the Service made another determination to continue the suspension (80 FR 42524, July 17, 2015). This decision was again due to the Service being unable to make an enhancement finding even after receiving additional materials from ZPWMA and others. The suspension that resulted from the negative enhancement findings did not prohibit U.S. hunters from traveling to Zimbabwe and participating in an elephant hunt. The Act does not prohibit take (e.g., hunting) within a foreign country; it prohibits import of trophies taken during such hunts

without required authorization under the Act.

Following the Service's March 26, 2015, finding, the Service sent a letter on May 12, 2015, to the Honorable Saviour Kasukuwere, (formerly) Zimbabwe's Minister of Environment, Water and Climate, outlining the concerns the Service still had regarding elephant trophy imports from Zimbabwe. The letter identified six areas of concern: the lack of a current management plan; the current population status of elephants in Zimbabwe; poaching levels and prevention; regulations and enforcement concerns; the sustainable utilization of elephants in Zimbabwe; and the utilization of hunting revenues.

On July 20, 2015, ZPWMA responded to each of the questions outlined in the Service's letter and included a draft version of the *Action Plan for Elephant Conservation and Management in Zimbabwe (2015–2020)*. In January 2016, the Service received the final version of the action plan, the *Zimbabwe National Elephant Management Plan (2015–2020)*, that had been approved and signed by the (then) Director-General of ZPWMA Edson Chidziya, on January 20, 2016, and the Honorable Oppah Muchinguri-Kashiri, Minister of Environment, Water and Climate, on January 21, 2016.

In September 2016, during the 17th Meeting of the Conference of the Parties to CITES, the Service met with representatives from Zimbabwe to further discuss the current status of the Service's evaluation of the importation of elephant trophies. As a result of those conversations, the Service received a letter dated November 8, 2016, with supplemental information regarding Zimbabwe's elephant management plan priorities. Further, on January 27, 2017, the Service received a letter from ZPWMA containing a report, "The Role of Trophy Hunting of Elephants in Support of the Zimbabwe's Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) Program: December 2016" that more fully discussed the source and amount of revenue generated between 2010 and 2015 through the CAMPFIRE program, the current role of CAMPFIRE, and how revenue generated by elephant hunting has been utilized within communal areas over this 6-year period and into the future.

Under 50 CFR 17.40(e)(6)(i)(B), the Service evaluates a number of factors to determine whether the killing of the trophy animal taken in a range country will enhance the survival of African elephants as well as taking into consideration the permit issuance

criteria outlined in 50 CFR 17.32(a)(2). In evaluating each of these criteria, the Service has considered the information currently available to the Service as of the date of this finding on elephant hunting in Zimbabwe in 2016, 2017, and 2018, including information provided by the Government of Zimbabwe, current applicants for permits to import sport-hunted elephant trophies, interested individuals and organizations, and other information available to the Service.

Zimbabwe's Conservation Efforts for Elephants

On January 21, 2016, Zimbabwe adopted the *Zimbabwe National Elephant Management Plan (2015–2020)* (EMP) that replaced *The Policy and Plan for Elephant Management in Zimbabwe (1997)* and *Elephant Management in Zimbabwe, third edition* (July 1996), the former management plans. The EMP incorporates an adaptive management framework with higher level targets, with key components, strategic objectives, and outputs. Each key component has management actions that can be measured and verified through "Key Performance Indicators." A set deadline for each action was identified. These measurable provisions allow ZPWMA to monitor the success of the new management plan and, through an adaptive management approach, address newly emerging concerns and long-term management needs. The EMP addresses the challenges identified by the 2014 workshop participants and concerns identified by the Service about the previous management plans. The EMP was developed as an outcome of several national and regional workshops that included government officials, nongovernmental organizations (NGOs), rural community leaders, and safari outfitters and landowners.

The 2014 Pan African Elephant Aerial Survey, also known as the Great Elephant Census (GEC), available in 2015, provided ZPWMA with a better elephant baseline population abundance estimate to assess future hunting quotas, management efforts, and anti-poaching activities. Confirmed results from the GEC reported an estimate for elephant abundance in Zimbabwe to be 82,304 individuals (73,715–90,893). The International Union for Conservation of Nature's African Elephant Specialist Group (IUCN AfESG) *African Elephant Status Report–2016* estimated Zimbabwe's elephant population at $82,630 \pm 8,589$ across a range of 81,228 km². The results of the 2014 GEC, and subsequent survey data reported in the 2016 AfESG report, are more reliable and provide a better basis for

establishing management priorities than previous surveys and guesses, and are now utilized in the EMP and quota setting.

As identified in the 2015 finding, the Service explained that, if properly implemented, the ZPWMA regulatory mechanisms for managing elephants appear to be adequate. A key issue in the 2015 finding was whether an adequate mechanism is in place to reliably document the financial benefits that U.S. hunters provide for elephant conservation through participation in a hunting program that addresses management needs of the species and whether the funds were utilized in a meaningful manner. Since the 2015 finding, the Service has received information regarding the Tourism Receipts Accounting System (TRAS) and its web-based system (TRAS2) under which the Reserve Bank of Zimbabwe, in collaboration with relevant stakeholders, can now track all revenue generated through hunting activities. Under this system, all authorized hunts are now being registered, allowing for the capture of hunting data, such as the origin of clients, value of trophies and hunts, and area hunted, so that officials can monitor hunting quota utilization and track hunted trophies. This system will provide data that was not previously easily obtained and greatly improve the ability to track hunting revenue.

One concern expressed by the Service in its previous findings was whether ZPWMA was responding to the apparent poaching crisis facing Zimbabwe. Based on communication from ZPWMA, as well as information received from other sources, ZPWMA has stepped up its anti-poaching efforts nationally by adopting a number of "Urgent Measures." As shown in their July 2015 response to Service questions, most of ZPWMA's budget (77 percent) is allocated to staff costs and patrol provisions. These expenditures reportedly fund anti-poaching efforts throughout the elephant range. ZPWMA reportedly has a staff of 1,504 active field rangers and has stated that there is intent to increase this number. According to "The Zimbabwe National Elephant Supplementary Management Plan (2015–2020)", provided to the Service in late 2016, over 80 percent of spending under the new EMP has been on law enforcement (anti-poaching) and training, with law enforcement identified as the top priority going forward.

With the adoption of the EMP on January 21, 2016, it appears that ZPWMA has the means to successfully implement these laws and regulations.

Moreover, ZPWMA has a mechanism in place to monitor the effects of the EMP and adapt to changing environmental and social factors that would adversely affect elephant populations within Zimbabwe.

According to the information provided to the Service in late 2014 and 2015, Zimbabwe had established hunting quotas for all areas of the country. However, it was not until late 2015 and early 2016 that the Service received more specific information on how these quotas are established, including how other forms of take, such as poaching and problem animal control, were taken into account. Further, it was not until the EMP was signed into effect on January 21, 2016, that the Service had confidence that ZPWMA had in place effective mechanisms to ensure long-term sustainability of its elephant population.

According to ZPWMA, quotas that were established before the EMP were set to maximize the sustainable production of high-quality trophies without detriment to the population. With the establishment of the EMP, there is a more systematic, scientific approach to establish national quotas. While ZPWMA still currently starts with an annual quota of 500 elephants, the quota is not immediately divided among all of the hunting areas. Instead, ZPWMA takes into consideration the results of the 2014 survey and subsequent surveys, results from research efforts, the size of the hunting area in relation to elephant habitat requirements, illegal harvest and other forms of take, how the hunting areas are managed in relation to land use or fencing, human-wildlife conflicts that have occurred previously, and recommended sustainable harvest levels developed based on ecological assessments of the hunting area. This information is then further evaluated in consideration of other species within the hunting area, past elephant trophy quality, and community benefits of proposed harvests.

Since our findings in 2014 and 2015, CAMPFIRE has provided more information on how their programs support the conservation of elephants and provide benefits to and promote greater tolerance of wildlife in rural communities, including new efforts to improve the effectiveness of CAMPFIRE and new revenue-sharing guidelines. An overarching analysis of CAMPFIRE, supported by a grant of 12 million Euros from the European Union, is currently being conducted and is scheduled to be completed by the end of 2017. Although this review is still under way, more information has been provided to the

Service regarding how funds are utilized and the basis for hunting quotas.

Since our 2014 and 2015 findings, there are strong indications that the efforts of private landowners and consortiums to manage elephants within their areas of control have received greater support from ZPWMA and the Zimbabwean Government. ZPWMA has devolved authority to manage and benefit from wildlife on communal and private lands to the landholders. There now appears to be a greater effort on the part of ZPWMA to work with NGOs, landowners, and safari area concessionaires to improve elephant management and anti-poaching efforts. According to their July 2015 response to the Service, and supported by the report on the implementation of the EMP, ZPWMA is engaging private players in co-management in some areas and entering into long-term lease agreements (10–25 years) to manage some protected areas. In certain areas, ZPWMA is reportedly collaborating with safari operators; in others, they collaborate with NGOs, such as the Tashinga Initiative in the Zambezi Valley and World Wildlife Fund in the Hwange-Sanyati Biological Corridor. There is increased support from the Central Government and Rural District Councils to expand and support local conservation efforts, and there is evidence that local conservation efforts are meeting management deficiencies that the Service identified previously.

Current Finding

Therefore, in accordance with the regulatory requirements, the Service is able to make a determination that the killing of trophy animals in Zimbabwe, on or after January 21, 2016, and on or before December 31, 2018, will enhance the survival of the African elephant. With the information currently available, applications to import trophies hunted during this time period will be considered to have met this requirement unless we issue a new finding based on available information. In accordance with the section 4(d) rule for the African elephant at 50 CFR 17.40(e), the Service will review each application received for import of such specimens on a case-by-case basis and each application also needs to meet all other applicable permitting requirements before it may be authorized. On an ongoing basis and as it evaluates each application, the Service will continue to monitor the status of the elephant population, the management program for elephants in the country to ensure that the program is promoting the conservation of the species, and whether the participation

of U.S. hunters in the program provides a clear benefit to the species. Accordingly, the Service may modify its determination based on available information consistent with the regulatory requirements. In addition, the Service will reevaluate the status of African elephants in Zimbabwe before the end of 2018 and make a new finding in the beginning of 2019 for, at least, the 2019 hunting season.

Today's enhancement finding has been posted at <http://www.fws.gov/international/pdf/enhancement-finding-2017-elephant-Zimbabwe.PDF>. In addition, a list of frequently asked questions regarding the importation of sport-hunted elephant trophies from Zimbabwe is available on the Service's web page at <https://www.fws.gov/international/permits/by-activity/sport-hunted-trophies-elephants.html>.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[XXX.LLAZG02000.71220000.KD0000.LVTF0958340;AZA3116]

Notice of Availability of the Draft Ray Land Exchange/Plan Amendment Supplemental Environmental Impact Statement, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), Gila District, Tucson Field Office has prepared a Draft Supplemental Environmental Impact Statement (EIS) for the Ray Land Exchange/Plan Amendment and by this Notice is announcing its availability and the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Ray Land Exchange/Plan Amendment Draft Supplemental EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public

involvement activities at least 15 days in advance through public notices, media releases, or mailings.

ADDRESSES: You may submit comments related to the Ray Land Exchange/Plan Amendment Draft Supplemental EIS by any of the following methods:

- *Web site:* <http://go.usa.gov/xn2FG>.
- *Email:* blm_az_raylandexchange@blm.gov.
- *Fax:* 602-417-9454.
- *Mail:* BLM Arizona State Office, Attn: Ray Land Exchange, One North Central Avenue, Suite 800, Phoenix, AZ 85004-4427.

Copies of the Ray Land Exchange/Plan Amendment Draft Supplemental EIS are available in the BLM Arizona State Office at the above address; the BLM Tucson Field Office at 3201 East Universal Way, Tucson, AZ 85756; the BLM Kingman Field Office at 2755 Mission Boulevard, Kingman, AZ 86401; and the Kearny Public Library at 912-A Tilbury Road, Kearny, AZ 85137.

FOR FURTHER INFORMATION CONTACT:

Michael Werner, Project Manager, telephone 602-417-9561; address: One North Central Avenue, Suite 800, Phoenix, AZ 85004-4427; email: mwerner@blm.gov.

SUPPLEMENTARY INFORMATION: The BLM Gila District, Tucson Field Office, is issuing the Ray Land Exchange/Plan Amendment Supplemental EIS to augment the environmental impact analysis in the Ray Land Exchange/Plan Amendment Final EIS completed by the BLM in 1999. The BLM issued the Final EIS for the Ray Land Exchange/Plan Amendment in June 1999 and the Record of Decision in May 2000. The decision approved a land exchange between ASARCO LLC (ASARCO) and the BLM for approximately 10,976 acres of public lands and federally owned mineral estate for acquisition by ASARCO (the Selected Lands) in exchange for approximately 7,304 acres of private land owned by ASARCO and identified by the BLM as desirable for improving access for hunting and other recreation (the Offered Lands). The decision was challenged administratively and in Federal court, with the plaintiffs ultimately prevailing in the Ninth Circuit Court of Appeals in November 2010. The court concluded that the BLM violated NEPA and FLPMA "in assuming without explanation that ASARCO would perform mining operations on the selected lands in the same manner regardless of the land exchange" (*Center for Biological Diversity v. U.S. Department of Interior*, 623 F.3d 633 [9th Cir. 2010]). The court recognized that ASARCO has the right to conduct

mining and related activities under the General Mining Law, based on ASARCO's mining and mill site claims on the Selected Lands. But the court believed that the manner and extent of mining were likely to differ, depending on whether the Selected Lands are owned by the United States as public lands subject to the BLM's surface use regulations at 43 CFR 3809 or by ASARCO as private lands in fee simple, in which case the BLM's surface-use regulations would not apply. The Ninth Circuit Court stated that ASARCO is not required to prepare and submit a Mine Plan of Operations (MPO) for future activities on the Selected Lands to complete the exchange. Instead, "the BLM must make a meaningful comparison of the environmental consequences of ASARCO's likely mining operations with and without the requirement that MPOs be prepared by ASARCO and approved by the BLM—that is, with and without the proposed exchange." Because the BLM did not perform this "with and without" comparison, the court held that the BLM did not adequately consider the environmental impacts of the land exchange or Resource Management Plan (RMP) amendments. For the same reason, the court also held that the BLM did not properly analyze whether the public interest will be served by making the exchange under FLPMA, section 206(a).

In accordance with the courts' rulings and remand orders, the Draft Supplemental EIS for the Ray Land Exchange provides the "with and without" comparative analysis found lacking by the Ninth Circuit Court. The "with and without" analysis compares two scenarios of potential environmental impacts on the Selected Lands from mining operations. One scenario analyzes potential impacts that could occur as a result of mining activities on the Selected Lands if they are not exchanged and remain under BLM jurisdiction (*i.e.*, mining occurs with BLM regulations). The other scenario analyzes potential impacts that could occur as a result of mining activities if the Selected Lands are exchanged and become privately owned lands (*i.e.*, mining occurs without BLM regulations). The Draft Supplemental EIS also addresses any substantial changes in the land exchange or plan amendments and any significant new information or circumstances that are relevant to analyzing the impacts of the land exchange or plan amendments (see 40 CFR 1502.9(c); BLM NEPA Handbook, Section 5.3 [January 2008]).

The purpose of the proposed Ray Land Exchange would be to exchange