

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-HQ-IA-2021-0099;
FXIA1671090000-234-FF09A30000]

RIN 1018-BG66

Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA). The purposes are 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 all proposed recipients of live African elephants are suitably equipped to house and care for them; to clarify the existing enhancement requirement during our 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. Amendments to the section 4(d) regulations in 2016 prohibited the import and export of African elephant ivory with limited exceptions. This final rule does not affect the regulations pertaining to African elephant ivory.

DATES: This rule is effective May 1, 2024.

Information Collection Requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after the date of publication of this rule in the **Federal Register**. Therefore, comments should be submitted to OMB by May 1, 2024.

ADDRESSES: This rule and supporting documentation, including the environmental assessment and economic analysis, are available at <https://www.regulations.gov> in Docket No. FWS-HQ-IA-2021-0099.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803 (mail); or Info_Coll@fws.gov (email). Please reference OMB Control Number 1018-0186 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Mary Cogliano, Manager, Branch of Permits, Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041 (telephone (703) 358-2104). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need to Publish a Final Rule. When a species is listed as threatened, section 4(d) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), gives discretion to the Secretary of the Interior (Secretary) to issue regulations that the Secretary deems necessary and advisable to provide for the conservation of such species. Considering the rise in international trade of live elephants, particularly of wild-sourced elephants, and recent CITES developments concerning regulation of trade in live elephants, as well as a need to clarify our enhancement standards and improve the permitting process for import of sport-hunted elephant trophies, we reevaluated the provisions of the regulations that were issued under section 4(d) of the ESA for the African elephant. We find it is appropriate for

the United States to adopt requirements under the ESA to 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, clarifying the enhancement requirement for the import of African elephant sport-hunted trophies and receiving information from the range countries 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 in the decision-making process for the import of African elephant sport-hunted trophies will increase transparency with stakeholders. To support U.S. African elephant conservation efforts, we will allow certain types of imports only from countries that have achieved a Category One designation under the CITES National Legislation Project, which is accomplished by meeting the basic requirements to implement CITES through the Party's adoption of national laws to implement the treaty. On November 17, 2022, we published a proposed rule to revise the current section 4(d) regulations (87 FR 68975) and opened the public comment period for 60 days, until January 17, 2023. On January 5, 2023, we held a virtual public hearing where we explained the proposed changes and sought public comment. On January 17, 2023, we extended the public comment period for an additional 60 days, to March 20, 2023 (88 FR 2597).

We are revising the section 4(d) rule (in part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.40(e)) by adopting measures that are necessary and advisable for the current conservation needs of the species, based on our evaluation of the current threats to the African elephant. This final section 4(d) rule removes from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. The final rule also establishes the standards used to evaluate "enhancement" under the ESA for the import of wild-sourced live African elephants under a new 50 CFR 17.40(e)(10). This provision establishes an annual certification requirement for range countries that allow for export of live African elephants destined for the

United States to provide the Service with information about the management and status of African elephants in their country.

This final rule also clarifies our evaluation of the existing enhancement requirement regarding applications for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6). This provision establishes an annual certification requirement for range countries that allow for export of sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This provision does not change the enhancement requirement for the import of sport-hunted trophies under the previous section 4(d) rule but clarifies how that requirement can be met.

This final rule also includes incorporating the CITES National Legislation Project category designations (see 50 CFR 23.7 and <https://www.cites.org>) into the acceptance of imports under 50 CFR 17.40(e)(2), (e)(6), and (e)(10) under a new 50 CFR 17.40(e)(11).

Need for Regulatory Action

We have reevaluated the provisions of the current section 4(d) rule and considered other administrative actions in light of the rise in international trade of live African elephants. In addition, we have received a rulemaking petition under the Administrative Procedure Act (5 U.S.C. 553(e)) specifically relating to the import of African elephant sport-hunted trophies. The petition is a request to initiate an expedited rulemaking to reinstate negative enhancement findings for African elephant sport-hunted trophies taken in Zimbabwe (Friends of Animals (FOA), received May 17, 2021).

We are responding to the petition and information provided with it through the revisions in this document to the section 4(d) rule for the African elephant.

In the petition described above, FOA requests the Service to: (1) repeal or amend the memorandum dated March 1, 2018, in which the Service withdrew certain findings for ESA-listed species taken as sport-hunted trophies; (2) reinstate the Enhancement Finding for African elephants Taken as Sport-hunted Trophies in Zimbabwe On or After January 1, 2015 (Mar. 26, 2015); and (3) enact an immediate moratorium on the importation of African elephant sport-hunted trophies from Zimbabwe. Additional information can be found below in *Basis for Regulatory Changes*;

however, in summary, the Service previously issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country basis. In response to a D.C. Circuit Court opinion, *Safari Club Int'l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe and now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and implementation of the application-by-application approach in *Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020).

In fall 2022, right before publication of the African elephant section 4(d) proposed rule, the Service received a petition for rulemaking from Conservation Force (CF) to immediately suspend, then to revise or repeal, the limit of two African elephant trophy import permits per calendar year in the African elephant section 4(d) regulations governing import of sport-hunted African elephant trophies. Specifically, the petitioner requests that the Service revise the African elephant section 4(d) rule to allow four trophies per calendar year to cover 2 successive years of double hunts. They request the two-per-year rule be suspended until 2 or more years after the permitting backlog is addressed and recommend a Director's Order to suspend the two-per-year rule for an immediate effective date. The same request made in the petition was also submitted as part of the public-comment process on the African elephant section 4(d) proposed rule. The Service has addressed the petition in the relevant responses to public comments.

This final rule clarifies the enhancement criteria for our assessment of an application for the import of an African elephant sport-hunted trophy. Under this final rule, we will continue to evaluate applications on an application-by-application basis, but the clarified enhancement criteria include the requirement to obtain information on the status and management of the African elephant within the range country on an annual basis. The clarified enhancement criteria will assist the Service in ensuring that any import of an African elephant sport-hunted trophy contributes to enhancing the conservation of the species and that

the import does not contribute to the decline of the species.

Ultimately, under this final section 4(d) rule, we have determined that there is a conservation need to (1) establish permitting requirements under the ESA for trade in live African elephants, enhancement standards under the ESA for the import of wild-sourced live African elephants, and requirements to ensure proposed recipients of live African elephants are suitably equipped to house and care for the elephants; (2) clarify the enhancement standards for the import of African elephant sport-hunted trophies; and (3) incorporate the CITES National Legislation Project designations into the requirements for certain imports.

Background

African elephants are a “keystone species” (a species on which other species in an ecosystem largely depend, such that if it were removed the ecosystem would change drastically) and have a unique role in the ecosystem. The species inhabits a wide variety of habitat types, such as savannahs, forests, deserts, and grasslands, and can migrate long distances, depending upon resource availability. African elephants modify habitat through numerous means, such as through bulk processing of plant materials, preventing the encroachment of woodlands onto grasslands, dispersing seeds, and maintaining waterways, among others. As a result of this habitat modification, the species has the potential to alter fire regimes, influence the spatial distribution of other species, and change species richness. Because of the numerous and often complex relationships between African elephants and (1) other African elephants, (2) other species on the landscape, and (3) their environment, the removal of African elephants from the wild has the potential to have large-scale ramifications on the composition and, in turn, health of the ecosystem. According to the International Union for Conservation of Nature (IUCN), the principal threat to African elephants has been poaching for ivory, but development for agriculture, coupled with associated human-elephant conflict as suitable elephant habitat is gradually reduced, are increasing as threats.

The Service has a responsibility to conserve both domestic and foreign species, and the ESA makes no distinction between foreign species and domestic species in listing species as threatened or endangered. The protections of the ESA, including sections 9 and 4(d), generally apply to

both listed foreign species and domestic species, and section 8 of the ESA provides authorities for international cooperation on foreign species. However, some significant differences in the Service's authorities result in differences in our ability to affect conservation for foreign and domestic species under the ESA. The major differences are that the Service has no regulatory jurisdiction over take of a listed species in a foreign country, or of trade in listed species outside the United States by persons not subject to the jurisdiction of the United States (50 CFR 17.21). The Service also does not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States (50 CFR 424.12(g)). The protections of the ESA through listing are likely to have their greatest conservation effect for foreign species with regard to regulating trade to, from, through, or within the United States, and other activities with foreign species in the United States.

Accordingly, we find it is necessary and advisable to adopt requirements under the ESA to 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 demand for live African elephants in the United States enhances the conservation of the species and does not contribute to the decline of the species in the wild. We also evaluated our current process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We considered how our permitting process and resulting decisions could be more transparent so that applicants, the public, and stakeholders understand the requirements under the ESA. To clarify and improve this process, we are adding new provisions to 50 CFR 17.40(e)(6) and 50 CFR 17.40(e)(10) that establish an annual certification requirement for African elephant range countries that export sport-hunted African elephant trophies or live, wild-sourced African elephants to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will be a part of our decision-making on applications to permit the import of African elephant sport-hunted trophies or live, wild-sourced African elephants. We note that the certification from the range country to the Service will be able to reflect if

there are no or minimal changes from one year to the next. If our evaluation determines that the requirements are no longer being met, we will work with the range country to communicate and address any concerns. The annual certification requirement will increase the efficiency of our permitting process and enable us to ensure that authorized imports contribute to enhancing the conservation of the species and that the imports do not contribute to the decline of the species.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies or live, wild-sourced African elephants also increases transparency with stakeholders and will lead to more efficient evaluations of applications. This change to the section 4(d) rule does not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. The decisions about whether to hunt African elephants will continue to be made by hunters and the countries that allow hunting, and imports will be allowed only in circumstances where the activities are well-managed. The import of any associated sport-hunted trophy into the United States will continue to be regulated and to require an enhancement finding and threatened species import permit. The adopted measures are anticipated to support development and implementation of effective management measures in foreign countries that enhance African elephant conservation.

Further, we find it necessary to ensure that we allow African elephant imports only from countries that have met the basic requirement to implement CITES under their national laws. Thus, this final rule incorporates a requirement that African elephant imports, including live elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies, be considered only when the country of origin and export or re-export has achieved a Category One designation under the CITES National Legislation Project with limited exceptions. Making this regulatory change further ensures that authorized imports of African elephants are not detrimental to the survival of the species.

Regulatory Background

In the United States, the African elephant is protected under the ESA, the African Elephant Conservation Act (AFECA) (16 U.S.C. 4201 *et seq.*), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) (27

U.S.T. 1087), as implemented in the United States through the ESA.

Endangered Species Act. Under the ESA, species may be listed either as "endangered" or "threatened." When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified at 50 CFR 17.21. With respect to endangered species of fish or wildlife, these include prohibitions on import; export; take within the United States, within the territorial seas of the United States, or upon the high seas; possession and other acts with unlawfully taken specimens; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce of the species and their parts and products. It is also unlawful to attempt to commit, to solicit another to commit, or to cause to be committed any such conduct. However, under certain circumstances, permits may be issued that authorize exceptions to prohibited activities.

In contrast, prohibitions for threatened species are not directly specified by the ESA, and instead are governed by section 4(d). Section 4(d) of the ESA contains two sentences. The first sentence states that the Secretary shall issue such regulations as he or she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language like "necessary and advisable" demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). "Conservation" is defined in the ESA to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary (16 U.S.C. 1532(3)). Additionally, the second sentence of section 4(d) of the ESA states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, with respect to endangered species. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are

appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all the threats that a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the ESA was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The African elephant was listed as threatened under the ESA, effective June 11, 1978 (43 FR 20499, May 12, 1978). A review of the status of the species at that time showed that the African elephant was declining in many parts of its range and that habitat loss, illegal killing of elephants for their ivory, and inadequacy of existing regulatory mechanisms were factors contributing to the decline. At the same time the African elephant was designated as a threatened species, the Service promulgated a section 4(d) rule to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978). The 1978 section 4(d) rule for the African elephant stated that the prohibitions at 50 CFR 17.31 applied to any African elephant, alive or dead, and to any part, product, or offspring thereof, with certain exceptions.

Specifically, under the 1978 rule, the prohibition at 50 CFR 17.31 against importation did not apply to African elephant specimens that had originated in the wild in a country that was a Party to CITES if they had been exported or re-exported in accordance with Article IV of the Convention and had remained in customs control in any country not party to the Convention that they transited enroute to the United States (at that time, the only African elephant range countries that were Parties to CITES were Botswana, Ghana, Niger, Nigeria, Senegal, South Africa, and Zaire [now the Democratic Republic of

the Congo].) The 1978 rule allowed for the Service to issue a special purpose permit in accordance with the provisions of 50 CFR 17.32 to authorize any activity otherwise prohibited with regard to the African elephant, upon receipt of proof that the specimens were already in the United States on June 11, 1978, or that the specimens were imported under the exception described above.

The section 4(d) rule has been amended four times, in part in response to the population decline of African elephants and the increase in illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties. On September 20, 1982, the Service amended the section 4(d) rule for the African elephant (47 FR 31384, July 20, 1982) to ease restrictions on domestic activities and to align its requirements more closely with provisions in CITES Resolution Conf. 3.12, *Trade in African elephant ivory*, adopted by the CITES Parties at the third meeting of the Conference of the Parties (CoP3, 1981). The 1982 rule applied only to import and export of ivory (and not other elephant specimens) and eliminated the prohibitions under the ESA against taking, possession of unlawfully taken specimens, and certain activities for the purpose of engaging in interstate and foreign commerce, including the sale and offer for sale in interstate commerce of African elephant specimens. At that time, the Service concluded that the restrictions on interstate commerce contained in the 1978 rule were unnecessary and that the most effective means of utilizing limited resources to control ivory trade was through enforcement efforts focused on imports.

The ESA section 4(d) rule for the African elephant was further revised on September 9, 1992 (57 FR 35473, August 10, 1992), following establishment of the 1989 moratorium under the African Elephant Conservation Act on the import of African elephant ivory into the United States, and again on June 26, 2014 (79 FR 30400, May 27, 2014), associated with an update of U.S. CITES implementing regulations. In the 2014 revision of the section 4(d) rule, we removed the CITES marking requirements for African elephant sport-hunted trophies. At the same time, these marking requirements were updated and incorporated into our CITES regulations at 50 CFR 23.74. The purpose of this regulatory change was to make clear what is required under CITES (at 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (at 50 CFR part 17).

In response to the alarming rise in poaching to fuel the growing illegal trade in ivory, the Service again revised the section 4(d) rule on July 6, 2016 (81 FR 36388, June 6, 2016). The revised rule prohibited the import and export of African elephant ivory with limited exceptions for musical instruments, items that are part of a traveling exhibition, and items that are part of a household move or inheritance when specific criteria are met and ivory for law enforcement or genuine scientific purposes. The revised rule amended the exception for import of sport-hunted trophies with an enhancement finding by adding a requirement that a threatened species import permit be issued under 50 CFR 17.32. The revised rule also limited the number of sport-hunted African elephant trophies imported into the United States to two per hunter per year. Interstate and foreign commerce in African elephant ivory was prohibited except for items that qualify as ESA antiques and certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory and meet specific criteria. The revised rule also prohibited take of live African elephants in the United States to help ensure that elephants held in captivity receive an appropriate standard of care. For example, live elephants in the United States cannot be used for sport hunting. Killing or otherwise hunting an elephant in the United States would be prohibited take. The revised rule did not amend exceptions allowing for trade in live African elephants and African elephant parts and products other than ivory and sport-hunted trophies. Specifically, under the current section 4(d) rule, live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under 50 CFR 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met. The revised rule made it unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy.

In summary, under the provisions of the section 4(d) rule published in 2016, at 50 CFR 17.40(e), all of the prohibitions and exceptions in 50 CFR

17.31 (incorporating 50 CFR 17.21) and 17.32 apply to the African elephant, with certain exceptions for qualifying activities provided in 50 CFR 17.40(e)(2) through (e)(9). Other than activities that qualify for an exception, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any African elephant. In addition, it is unlawful to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) African elephants within the United States or on the high seas. It is also illegal to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any African elephant that has been taken illegally.

We note that the Service has been petitioned to reclassify the African elephant as endangered and to recognize two species of African elephants and classify them both as endangered. Review of those petitions, through a process separate from this rulemaking, is ongoing.

African Elephant Conservation Act. The AfECA was enacted in 1988 to “perpetuate healthy populations of African elephants” by regulating the import and export of certain African elephant ivory to and from the United States. Building from and supporting existing programs under CITES, the AfECA called on the Service to establish moratoria on the import of raw and worked ivory from both African elephant range countries and intermediary countries (those that export ivory that does not originate in that country) that failed to meet certain statutory criteria. The statute also states that it does not provide authority for the Service to establish a moratorium that prohibits the import of sport-hunted trophies that meet certain standards. This limitation is specific to the AfECA and does not limit agency authority under the ESA.

In addition to authorizing establishment of the moratoria and prohibiting any import in violation of the terms of any moratorium, the AfECA prohibits: The import of raw African elephant ivory from any country that is not a range country; the import of raw or worked ivory exported from a range country in violation of that country’s laws or applicable CITES programs; the import of worked ivory, other than certain personal effects, unless the exporting country has determined that the ivory was legally acquired; and the

export of all raw (but not worked) African elephant ivory. While the AfECA comprehensively addresses the import of ivory into the United States, it does not address other uses of ivory or African elephant specimens other than ivory and sport-hunted trophies. The AfECA does not regulate the use of ivory within the United States and, other than the prohibition on the export of raw ivory, does not regulate export of ivory from the United States. The AfECA also does not regulate the import or export of live African elephants.

Following enactment of the AfECA (in October 1988), the Service established, on December 27, 1988, a moratorium on the import into the United States of African elephant ivory from countries that were not parties to CITES (53 FR 52242). On February 24, 1989, the Service established a second moratorium on all ivory imports into the United States from Somalia (54 FR 8008). On June 9, 1989, the Service put in place a moratorium that banned the import of ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES entered into force in 1975 and currently has 184 Parties (183 countries and 1 regional economic integration organization that have ratified the Convention), including the United States. The aim of CITES is to regulate international trade in listed animal and plant species, including their parts and products, to ensure the trade is legal and does not threaten the survival of species. CITES regulates both commercial and noncommercial international trade through a system of permits and certificates that must be presented when leaving and entering a country with CITES specimens. Species are listed in one of three appendices, which provide different levels of protection. In some circumstances, different populations of a species are listed at different levels. Appendix I includes species that are threatened with extinction and are or may be affected by trade. The Convention states that Appendix-I species must be subject to “particularly strict regulation” and trade in specimens of these species should be authorized only “in exceptional circumstances.” Appendix II includes species that are not necessarily threatened with extinction now but may become so if international trade is not regulated. Appendix III includes species that a range country has identified as being subject to regulation within its jurisdiction and as needing cooperation of other Parties in the control of international trade. Import

and export of CITES species is prohibited unless accompanied by any required CITES documents. Documentation requirements vary depending on the CITES Appendix in which the species or population is included and other factors. CITES documents cannot be issued until specific biological and legal findings have been made. U.S. CITES implementing regulations are found in 50 CFR part 23. The CITES Appendices are found on the CITES website (see www.cites.org; <https://cites.org/eng/app/appendices.php>; 50 CFR 23.7 and 23.91).

Ghana first listed the African elephant in CITES Appendix III on February 26, 1976. Later that year, the CITES Parties agreed to add African elephants to Appendix II, effective February 4, 1977. In October 1989, all populations of African elephants were transferred from CITES Appendix II to Appendix I (effective in January 1990), which ended much of the legal commercial trade in African elephant ivory.

In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a panel of experts (which concluded, among other things, that populations in these countries were stable or increasing and that poaching pressure was low), the CITES Parties agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix-II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999) once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The African elephant population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. At that time, the panel of experts reviewing South Africa’s proposal concluded, among other things, that South Africa’s elephant population was increasing, that there were no apparent threats to the status of the population, and that the country’s anti-poaching measures were “extremely effective.” Since then, the

CITES Parties have revised the Appendix-II listing annotation.

The current annotation covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe for the exclusive purpose of allowing trade in:

- sport-hunted trophies for noncommercial purposes;
- live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for Botswana and Zimbabwe and for *in situ* conservation programs for Namibia and South Africa;
- hides;
- hair;
- trade in leather goods for commercial or noncommercial purposes for Botswana, Namibia, and South Africa and for noncommercial purposes for Zimbabwe;
- certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and
- a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009).

These specimens can be traded under CITES as Appendix-II specimens. As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I, and the trade in them is regulated accordingly.

With regard to live African elephants, as noted above, African elephants are included in CITES Appendix I, except for the annotated African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe that are included in CITES Appendix II. Live African elephants exported from Botswana and Zimbabwe under the annotation are for trade to “appropriate and acceptable destinations” as defined in Resolution Conf. 11.20 (Rev. CoP18) on *Definition of the term ‘appropriate and acceptable destinations,’* while live African elephants exported from Namibia and South Africa under the annotation are for “*in situ* conservation programs.” Under the annotation, all other live African elephant specimens from these four populations shall be deemed to be specimens of species included in Appendix I, and the trade in them shall be regulated accordingly. The annotation reads, in relevant part, as follows:

Populations of Botswana, Namibia, South Africa and Zimbabwe (listed in Appendix II):

For the exclusive purpose of allowing:

* * * * *

(b) trade in live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for

Botswana and Zimbabwe and for *in situ* conservation programs for Namibia and South Africa;

* * * * *

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

Appendix-I specimens require a CITES permit from both the exporting and importing countries. In the United States, the Service, as the U.S. Management Authority, issues Appendix-I import permits if required CITES findings are made, including: That the import is not for primarily commercial purposes (made by the Management Authority); that the import is for purposes that are not detrimental to the survival of the species (made by the Scientific Authority); and that the facility is suitably equipped to care for and house the specimens to be imported (made by the Scientific Authority). Requirements for an import permit are found at 50 CFR 23.35. With limited exceptions, an Appendix-I specimen may be used only for noncommercial purposes after import, 50 CFR 23.55. These same requirements apply to a live African elephant specimen from the Appendix-II populations if the trade does not meet the requirements of the annotation, because the specimen is treated as an Appendix-I specimen, and subject to Article III requirements.

Live elephants from Botswana and Zimbabwe traded in accordance with the annotation are traded as Appendix-II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. The “appropriate and acceptable destination” finding is made by the importing country’s Scientific Authority in consultation with the exporting country. For example, elephants from Botswana or Zimbabwe imported into the United States would require prior findings by the Service under the “appropriate and acceptable destination” annotation to be regulated pursuant to the requirements of Article IV as an Appendix-II specimen. Again, if the requirements of the annotation are not met, the specimen is treated as an Appendix-I specimen and subject to Article III requirements.

Live elephants from Namibia and South Africa traded in accordance with the annotation are traded as Appendix-II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. Under the annotation, these live

elephants may be traded only within the native range of the African elephant for “*in-situ* conservation programs.” Again, if the requirements of the annotation are not met, the specimen is traded as an Appendix-I specimen and subject to Article III requirements. For example, elephants from Namibia or South Africa imported into the United States are regulated pursuant to the requirements of Article III as an Appendix-I specimen. Accordingly, no import of an African elephant to the United States can occur without either a prior import permit issued by the Service in accordance with Article III, or in the case of elephants originating from Zimbabwe or Botswana, if the Service has made prior findings under the “appropriate and acceptable destination” annotation.

At CITES CoP18, in discussion of the definition of “appropriate and acceptable destinations,” the Parties adopted amendments to Resolution Conf. 11.20 (Rev. CoP18) that would not allow trade in live African elephants from Botswana and Zimbabwe outside their native range under the annotation, except in an exceptional circumstance (defined in the resolution). These amendments are the subject of ongoing discussion in CITES. At CoP19, the Conference of the Parties also adopted Decision 19.168, which temporarily extends the same process to all exports of wild-sourced live African elephants outside the species’ natural and historical range in Africa. Additionally, guidance on determining whether a proposed recipient of a living specimen of African elephant is suitably equipped to house and care for it was adopted at CoP18 and CoP19, as described below.

CITES National Legislation Project. In accordance with CITES Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention,* and with oversight from the CITES Standing Committee, the CITES Secretariat identifies Parties whose domestic measures do not provide them with the authority to:

- (i) Designate at least one Management Authority and one Scientific Authority,
- (ii) prohibit trade in specimens in violation of the Convention,
- (iii) penalize such trade, or
- (iv) confiscate specimens illegally traded or possessed.

All four requirements must be met by the national laws of a Party for the Party to meet the minimum requirements to implement CITES. It is an obligation of each Party under CITES to have national legislation in place that meets these requirements in order to engage in trade in compliance with CITES (CITES Article VIII(1), IX; see also Article II(4)).

For example, in the United States, the ESA meets these requirements. The Secretariat, under the CITES National Legislation Project and in consultation with the concerned Party, analyzes national legislation for the four aforementioned requirements and designates the legislation of each Party into one of three categories:

(1) Category One, defined as legislation that is believed generally to meet the requirements for implementation of CITES [all of provisions (i)–(iv) in the list above are met];

(2) Category Two, defined as legislation that is believed generally not to meet all of the requirements for the implementation of CITES [some of provisions (i)–(iv) in the list above are met]; and

(3) Category Three, defined as legislation that is believed generally not to meet the requirements for the implementation of CITES [none of provisions (i)–(iv) in the list above are met].

The Secretariat maintains a legislative status table, which is periodically revised with oversight by the Standing Committee, and includes the category in which each Party's legislation is placed and whether the Party has been identified by the Standing Committee as requiring attention as a priority. The CITES National Legislation Project designations are available with other official CITES documents on the CITES Secretariat website (see 50 CFR 23.7 and <https://cites.org/eng/legislation/parties>).

After the 77th Meeting of the Standing Committee (SC77) (Geneva, November 2023), range countries of the African elephant currently have national legislation classified as follows:

Category One: Angola, Cameroon, the Democratic Republic of the Congo, Ethiopia, Equatorial Guinea, Guinea-Bissau, Malawi, Namibia, Nigeria, Senegal, South Africa, United Republic of Tanzania, and Zimbabwe;

Category Two: Benin, Botswana, Burkina Faso, Chad, Republic of the Congo, Eritrea, Gabon, Guinea, Kenya, Mali, Mozambique, Sudan, Togo, and Zambia; and

Category Three: The Central African Republic, Côte d'Ivoire, Eswatini, Ghana, Liberia, Niger, Rwanda, Sierra Leone, Somalia, and Uganda.

The Standing Committee has identified the following Parties that are also range countries of the African elephant as requiring priority attention for review under the National Legislation Project: Botswana, Republic of the Congo, Guinea, Kenya, Liberia, Mozambique, Rwanda, Somalia, and Uganda. As noted above, these

categories are periodically revised as Parties enact CITES-implementing legislation, and therefore each Party in Category Two or Three can and is expected to achieve Category One. For example, following the publication of our proposed rule, the Secretariat announced at SC77 that the United Republic of Tanzania had made necessary updates to its national legislation, and the Standing Committee commended the United Republic of Tanzania for the efforts leading to their legislation being placed in Category One. Additionally, the legislation of a Party currently placed in Category One may be subject to a revised legislative analysis at any time following relevant legislative developments, such as repealing of CITES-implementing legislation. The Secretariat reports on progress, and issues are reviewed at regular meetings of the Conference of the Parties and the Standing Committee.

Basis for Regulatory Changes

Exercising the Secretary's authority under section 4(d) of the ESA, we have developed a final rule that is designed to address the African elephant's conservation needs. We find that this rule satisfies the requirement in section 4(d) of the ESA to issue regulations deemed necessary and advisable to provide for the conservation of the African elephant.

The Service recognizes that some have suggested the possibility of promulgating a ban or moratorium on the import of live African elephants, elephant sport-hunted trophies, or parts and products other than ivory and sport-hunted trophies, with no permitting exceptions. These suggestions were also raised in comments submitted on the proposed rule. We have not pursued such an option, and we note that there has not previously been such a ban promulgated under the ESA for African elephants or for any other ESA-listed endangered or threatened species. For example, although section 9(a)(1)(A) of the ESA and the Service's regulations in 50 CFR 17.21 prohibit import or export of any endangered wildlife, section 10(a)(1)(A) of the ESA and the Service's regulations at 50 CFR 17.22 provide exceptions by permit when certain issuance criteria are met. We are unconvinced that a conservation case has been made for considering taking such an unprecedented step for a threatened species. As referenced above, for an endangered species, all imports and exports are prohibited, with the exception of those accompanied by section 10(a)(1)(A) permits issued for scientific purposes or to enhance the propagation or survival of the species.

In the proposed rule, we did not propose a ban on imports of threatened African elephants with no permitting exceptions. A ban could require institutions exhibiting African elephants to rely on captive-breeding programs to replenish their stock, which could affect opportunities for genetic material exchanges, regardless of whether the institution is suitably equipped to care for and house the elephant or whether the trade is detrimental to or enhances the survival of the species. In addition, since elephants may face human-elephant conflict, for example as a result of their impact on local agriculture, some amount of culling could continue to occur despite a ban, such that banning the import of sport hunted trophies could deprive range countries of revenue for conservation purposes without necessarily affecting the number of animals removed from herds. A proposed ban of this nature would have conflicted with efforts to encourage positive elephant conservation efforts by range countries that are engaged in this trade and ensure that it is well-managed.

Rather, we intend the amendments to the section 4(d) rule presented below to continue to encourage African countries and people living with elephants to enhance their survival, provide incentives to take meaningful actions to conserve the species, and invest much-needed revenue into elephant conservation. Our final rule also ensures that we do not allow imports in circumstances where elephants are not well-managed and that any live elephants in trade and their offspring are well taken care of throughout their lifetimes.

General Provisions

We revise the section 4(d) rule for the African elephant in 50 CFR 17.40(e) to:

- remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17;
- establish requirements for the import of live African elephants under a new proposed 50 CFR 17.40(e)(10)(i);
- establish the standards used to evaluate "enhancement" under the ESA for the import of wild-sourced live African elephants under a new 50 CFR 17.40(e)(10)(ii), including an annual certification requirement for range countries that allows for export of live African elephants destined for the United States;
- require "suitably equipped to house and care for" findings for permitted transfers after import and other

permitted transfers to ensure live elephants are going only to facilities that are suitably equipped to house and care for them;

- improve and clarify our evaluation of the existing enhancement requirement during our evaluation of an application for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6) that establishes an annual certification requirement for range countries that export sport-hunted trophies to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in these countries; and

- incorporate the CITES National Legislation Project category designations into the acceptance of imports under current 50 CFR 17.40(e)(2) and (e)(6) and paragraph (e)(10) under a new paragraph (e)(11).

The protections this final rule provides to African elephants are described below. Nothing in this final rule will affect other legal requirements applicable to African elephants and their parts and products.

Import of Live Elephants

As noted above, we established new requirements for trade in live African elephants. Much work regarding trade in live elephants under CITES has occurred in recent years and helps to inform this final rule. The proposed rule (87 FR 68975, November 17, 2022) discussed the developments from CoP17 (Johannesburg, September–October 2016) up to CoP19 (Panama City, November 2022) in detail, including relevant amendments to Resolution Conf. 11.20 on *Definition of the term ‘appropriate and acceptable destinations’* and development of guidance related to trade in live African elephants. Additionally, decisions taken and guidance adopted at CoP19 further support the need for this rulemaking and are summarized below. As explained in our proposed rule, this recent CITES history and resolutions, decisions, and guidance surrounding the export and import of live African elephants from range countries underscores the need for the United States to address these issues in this final rulemaking, and to establish clear regulatory requirements for U.S. activities with live elephants to enhance the conservation of African elephants in all range countries.

Based on comments received on the proposed rule, we re-analyzed the data for live African elephants reported in the CITES trade database (<https://trade.cites.org/>). The total number of

live African elephants of all origins (e.g., sourced from the wild, captive-bred, or when the source was unknown) reported in the CITES trade database (<https://trade.cites.org/>) increased from 174 individuals (as reported by the importing country) between 2008 and 2013 to 354 individuals (as reported by the importing country) between 2014 and 2019. In the periods 2008–2013 and 2014–2019, the number of live wild-sourced African elephants exported/re-exported outside the continent of Africa increased from 100 individuals (as reported by the importing country) to 138 individuals (as reported by the importing country), a 38 percent increase. During this same time, the number of live wild-sourced African elephants traded within the continent of Africa increased from 25 individuals (as reported by the importing country) to 199 individuals (as reported by the importing country), a 696 percent increase.

Overall, the data show an increase in trade in live African elephants of 96.7 percent (based on importer reported data) during this time period. However, the data also show a shift in the trade of live wild-sourced African elephants. Between 2008 and 2013, 80 percent of the trade in live wild-sourced elephants was reported as exports outside the African continent, while only 36 percent was reported from 2014 to 2019. Yet, during 2014 to 2019, 59 percent of the trade in live wild-sourced elephants occurred within the continent of Africa, while only 20 percent occurred between 2008 and 2013. These values do not include the trade of African elephants (originally sourced from the wild) between countries outside the African continent. Moreover, the number of exported or re-exported wild-sourced live African elephants between any two Parties increased in the more recent years, even when excluding records for reintroduction purposes, with 82 individuals (as reported by the exporting country) exported/re-exported between 2008 and 2013, and 179 individuals (as reported by the exporting country) exported/re-exported between 2014 and 2019. This is an increase of approximately 118 percent in the international trade of live elephants during this time period. Although the CITES Trade Database is incomplete, contains traded elephants of an unknown source, and may double-count elephants in instances where trade occurred for the same elephant more than once within the allotted timeframe, the available trade data demonstrates that live African elephants, particularly wild-sourced

elephants, have been traded in higher numbers in recent years, the majority within the continent of Africa.

To generate funds for wildlife conservation and to mitigate human-elephant conflict, an auction of live elephants took place in 2020–2021 by the Ministry of Environment, Forestry and Tourism of Namibia. The auction advertised the sale of 170 live elephants and ultimately sold 57. Fifteen of those elephants sold were moved to a private reserve in Namibia and will remain there and the remaining 42 were to be exported. Twenty-two elephants were exported to the United Arab Emirates. At this time, 20 elephants are still to be taken from the wild, and their ultimate destination is not yet publicly known.

We are amending the section 4(d) rule as proposed to remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. We are also establishing the standards used to evaluate “enhancement” under the ESA for the import of wild-sourced live African elephants under 50 CFR 17.40(e)(10). As proposed, an enhancement determination for import of wild-sourced live African elephants will require prior receipt of the properly documented and verifiable annual certification provided by the government of the range country to the Service. In consideration of comments received, we have modified the criterion at § 17.40(e)(10)(ii)(A) to include circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing. This revised criterion reads: “(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.”

Additionally, this rule finalizes the proposed list of factors regarding the reporting of funds to be spent toward conservation of the species. Through this rule, § 17.40(e)(10)(ii)(H) includes a non-exhaustive list of concrete examples of how funds derived from activities with African elephants should be used to significantly and positively contribute to African elephant conservation. In this final rule, in consideration of comments received on the need for additional flexibility for range countries and local communities, we have modified the enhancement criterion that outlines how funds derived from live elephant imports should be applied toward African

elephant conservation. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild. We have replaced the word “primarily” with “significantly,” as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild to allow us greater flexibility in determining if enhancement has been satisfied based on the information available.

Aside from that change in terminology, the list of factors in the annual certification at § 17.40(e)(10)(ii)(A)–(I) is the same in this final rule as had been proposed. The Service will consider these factors as part of the determination whether the import of a wild-sourced live African elephant meets the enhancement standard for issuance of a threatened species permit.

We note that these regulations apply to import of live African elephants from all countries of origin, regardless of country of export or re-export and, therefore, require import permits for African elephants from both Appendix–I and Appendix–II populations. The country of origin/country of export is the country where the animal is taken from the wild or bred in captivity. Under section 9(c)(2) of the ESA (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exemption for the import of some threatened species. Importation of threatened species that are also listed under CITES Appendix II are presumed not to be in violation of the ESA if the importation is not made in the course of a commercial activity, all CITES requirements have been met, and all general wildlife import requirements under 50 CFR part 14 have been met. This presumption can be overcome, however, through issuance of a section 4(d) rule requiring ESA authorization prior to import, which rebuts the presumptive legality of otherwise qualifying imports (see *Safari Club Int’l v. Zinke*, 878 F.3d 316, 328–29 (D.C. Cir. 2017)). For example, the Service retained the requirement for ESA enhancement findings prior to the import of sport-hunted trophies in 1997 and 2000, when the four populations of African elephants were transferred from

CITES Appendix I to CITES Appendix II subject to an annotation.

We amended the African elephant section 4(d) rule in 2014 and 2016 and again maintained the requirement for an ESA enhancement finding prior to allowing the import of African elephant sport-hunted trophies. As the D.C. Circuit held in *Safari Club*, “[s]ection 9(c)(2) in no way constrains the Service’s section 4(d) authority to condition the importation of threatened Appendix–II species on an affirmative enhancement finding. Under section 4(d) of the ESA, the Service ‘shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species’ and may ‘prohibit with respect to any threatened species any act prohibited . . . with respect to endangered species.’ 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* § 1538(a)(1)(A), it may do the same with respect to threatened species under section 4(d), *see id.* § 1533(d).” The D.C. Circuit went on to explain that “promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [section 4(d) rule for African elephants].”

African elephant range countries are increasingly interested in selling live African elephants as a means to reduce overpopulation of elephants in some areas and to generate revenue. Accordingly, to effectively implement the ESA, the United States must have sufficient regulatory safeguards in place to ensure that the United States does not generate a demand for an illegal or unsustainable African elephant trade. Further, if the United States is a destination for trade in live African elephants, then we need to ensure that the trade is not only legal and sustainable, but also enhances the survival of the species in the wild, including by ensuring that revenue generated by the trade is going back into elephant conservation to address human-elephant conflict, habitat loss, poaching, and other threats to the survival of African elephants.

Our final rule requires an enhancement finding for the issuance of threatened species permits under 50 CFR 17.32 for the import and export (including re-export) of any live African elephant to enhance the species’ conservation and survival, allowing us

to evaluate all live African elephant imports and exports more carefully and consistently, in accordance with legal standards and the conservation needs of the species. Additionally, the issuance of threatened species enhancement permits under 50 CFR 17.32 means that the standards under 50 CFR part 13 are also in effect for imports of all elephants from all populations. Examples of those standards include the requirement that an applicant submit complete and accurate information during the application process and the ability of the Service to deny permits in situations where the applicant has been assessed a civil or criminal penalty under certain circumstances, failed to disclose material information, or made false statements. Therefore, we have determined that the additional safeguard of requiring the issuance of threatened species enhancement permits under 50 CFR 17.32 prior to the import and export of live African elephants is warranted.

Care of Live Elephants After Import and Other Permitted Transfers

As explained previously, the Division of Scientific Authority evaluates facilities importing African elephants to determine if the facility is suitably equipped to house and care for the live elephants to be imported. These “suitably equipped to house and care for” findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. Currently, the known total of live African elephants (*Loxodonta africana*) in the United States is 139 (as of 9/22/2023). The Service does not currently regulate or maintain data on the number and location of captive-held African elephants once within the United States. All data are from a voluntary database submitted by zoos (Species360 Zoological Information Management System (ZIMS), 2023). Elephant sanctuaries and other elephant-holding institutions including zoos may exist in the United States but not participate in Species360 and are, therefore, not listed in this database. As a result, the reported number of 139 elephants is a minimum number.

These 139 elephants are located across 33 institutions. This captive population consists of 30 males and 109 females with 5 births in the last 12 months (Species360 ZIMS, 2023). In recent years, from 2013 to 2019, the United States imported 23 live elephants (LEMIS database). The Service concludes there is a need to provide oversight of transfers of live elephants within the United States to

ensure live elephants are going only to facilities that are suitably equipped to house and care for them. That oversight will help ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild by reducing the overall number of imports to maintain elephants in captivity in the United States.

The best available information demonstrates that bringing elephants into captivity impairs their viability—they are not self-sustaining in captivity, and continuous importation is required for breeding purposes. Ensuring that the elephants imported into the United States and any subsequent movement of those elephants and their offspring are carefully regulated is necessary to minimize future removals from the wild. Median lifespan of zoo-born African elephants is 17 years, compared with 56 years in a well-studied wild population (Clubb et al. 2008). Mortality in the first 2 years is over 30 percent for captive-born animals, compared to 4–25 percent in wild populations. An estimated 54 percent of captive-born African elephant calves in the United States die while still juveniles (Prado-Oviedo et al. 2016). Removal from the wild impacts not only the individuals that are being removed but also the population being left behind. The effect of removing wild elephants from their family group, either by culling, hunting, poaching or live capture, impacts the survivability of the wild population. As noted in the proposed rule, in the time since CITES CoP17, a number of African elephant range countries (including members of the African Elephant Coalition) and over 75 elephant scientists and other experts from nongovernmental conservation and animal welfare organizations have expressed concern over the impact on the well-being of the animals involved and on those remaining in the wild in Africa (See, e.g., SC69 Inf. 36).

Substantive comments submitted during the comment period indicate the transfer of elephants between facilities in the United States is common. Prado-Oviedo et al. (2016) reviewed data on Asian and African elephants in the North American Regional Studbooks as of 2012. They found that, of the total population, more than 80 percent of elephants experienced at least one inter-zoo transfer during their lives, with imported African elephants transferred at a higher rate than imported Asian elephants. All imported elephants experienced at least one transfer (import

to a zoo was counted as one), and “94% experienced at least one subsequent transfer post-importation. In contrast, 45% (33/73) of captive born individuals had not experienced a transfer event.”

Elephants imported into the United States may not remain in the initial facility that has been determined to be suitably equipped to care for and house the animal(s). These animals and their offspring may be moved for breeding purposes, public display, space requirements, or other reasons. Currently, once these animals have been imported, the Service does not evaluate the facilities to which they or their offspring are being moved and receives no assurance that the facilities can adequately house and care for the animals they are receiving.

In Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 based on a proposal submitted by the United States and then revised at CoP18 (both of those CITES meetings took place after our finalization of amendments to the section 4(d) rule for African elephants in 2016) and presented new reasons to reconsider our domestic regulation of live African elephants under the ESA.

Additionally, as explained in our proposed rule, to assist Parties in undertaking the obligations of CITES Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*. Taxon-specific guidance for African elephants was subsequently developed by a working group of the CITES Animals Committee, *Nonbinding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it*, and endorsed by the CITES Standing Committee for consideration of CoP19. The CITES guidance was developed with participation by industry stakeholders, including the Association of Zoos & Aquariums (AZA), and the United States was a member of this working group. CoP19 subsequently considered the guidance, and adopted the guidance,

CoP19 Doc. 48; CoP19 Plen. Rec. 2 (Rev. 1), which is available at https://cites.org/eng/imp/appropriate_and_acceptable_destinations. Relevant factors in the guidance that support the need for suitably equipped to house and care findings for transfers include, but are not limited to, the following in section A, paragraph 8 of the guidance: “a) Membership in a recognized Zoo association can provide further reassurance that the destination adheres to the standards and guidelines of that association and helps to exchange males to prevent inbreeding, but it is as such neither a pre-condition for assessment of an appropriate destination, nor a proof that the facility is an appropriate and acceptable destination . . . c) arrangements should be made to ensure that any subsequent sale, donation or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen.”

In furtherance of these CITES recommendations, developed with leadership from the United States, and to enhance the conservation of African elephants, our final rule addresses these gaps in our domestic regulation of live African elephants by requiring that live African elephants may be sold or offered for sale in interstate commerce and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity only if authorized by a special purpose permit issued under 50 CFR 17.32. Entirely intrastate sale or transfer of African elephants already in the United States is regulated by State law, and in some cases subject to a permit condition and CITES use-after-import requirements, 50 CFR 23.55. As proposed, we are also requiring that each permit issued by the Service for a live African elephant will include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person unless authorized by a special purpose permit issued under 50 CFR 17.32. Each special purpose permit issued for a live African elephant will require a finding that the proposed recipient is suitably equipped to house and care for the live elephant. The evaluation will consider the same criteria and requirements found in 50 CFR 23.65 and applied during import of a live African elephant. While the Service could have gone further under the authority of the ESA, for example by also requiring a separate enhancement finding for each transfer, as is required for interstate commerce in endangered wildlife, we found that this more incremental increase in

requirements was well-tailored to the conservation needs of the species in light of current CITES recommendations.

As noted in the proposed rule, U.S. facilities that have previously been authorized to import live elephants under CITES have complied with “suitably equipped to house and care for” requirements. The Service expects that any facility wishing to transfer a live elephant will take necessary steps also to comply with these requirements. For any facility that is in compliance with these requirements, these new permitting requirements will impose a small recordkeeping and fee burden on these facilities and will ensure that any subsequent transfer of the live elephant or its offspring from these facilities is also only to facilities that are suitably equipped to house and care for live elephants.

Together, the permitting requirements in this final rule for any individual or entity subject to the jurisdiction of the United States that engages in activities with live African elephants are necessary and advisable to provide for the conservation of the species. These requirements will help prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and avoid injury, damage to health, or cruel treatment of live elephants in trade; promote the social well-being of these animals; and ensure that any subsequent sale, donation, or transfer of the elephant (internationally or domestically) or of any elephant born in the facility is also only to a facility suitably equipped to house and care for the specimen, as recommended by the CITES Conference of the Parties based on the conservation needs of elephants. Proper housing and care will help ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild by reducing the overall number of imports to maintain elephants in captivity in the United States.

Import of Personally Sport-Hunted Trophies

Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human-wildlife conflict, and law enforcement efforts. The IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012; IUCN Species

Survival Commission) note that well-managed trophy hunting can “assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods” and, further, that well-managed trophy hunting is “often a higher value, lower impact land use than alternatives such as agriculture or tourism.” When a trophy-hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance.

The ESA enhancement standards outlined in this final rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting. Not all trophy hunting is part of a well-managed or well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all CITES and ESA requirements are met. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import will not meet the criteria for an enhancement finding, and, consistent with both the previous regulations and these final regulations, cannot and will not be authorized for import into the United States. Under this final rule, we will continue to carefully evaluate African elephant trophy import applications in accordance with legal standards and the conservation needs of the species.

Under the section 4(d) rule for the African elephant, issuance of an ESA threatened species permit to import a sport-hunted trophy of an African elephant requires that the Service determine that the killing of the trophy animal would enhance the survival of the species (known as an “enhancement finding”).

We evaluated the process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We reviewed information within our permit-application files related to the investment of hunting fees that go into the conservation of these species and how they improve local communities and contribute to survival and recovery

of elephant populations. We also evaluated how the Service’s technical assistance to elephant range countries supports local communities and contributes to sustainable elephant populations. Additionally, we considered how we could improve our permitting process and resulting decisions to ensure that they are consistent with the purpose and intent of the ESA and, as a result, that permits we issue enhance the survival of the species in the wild.

In making ESA enhancement findings, we review all relevant information available to us, including information submitted with the individual permit applications, information received in response to inquiries we make of the range country, and all other reliable information we receive from interested parties, such as species experts, hunting organizations, community groups, and nongovernmental organizations. Historically, the Service periodically issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country (or “countrywide”) basis, based on the scientific and management information available to the Service, as was the practice for a number of other threatened sport-hunted species. In response to a D.C. Circuit Court opinion, *Safari Club Int’l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe, Tanzania, South Africa, Botswana, Namibia, and Zambia. No countrywide ESA enhancement findings are currently in effect. We now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service’s withdrawal of the countrywide findings and use of the application-by-application approach in *Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020). Therefore, since March 1, 2018, the Service has been making ESA enhancement findings to support permitting decisions on the import of sport-hunted trophies of African elephants on an application-by-application basis, ensuring consistent application of the regulatory criteria across all permit application adjudications. As a matter of policy, the Service continues to have the option of issuing countrywide enhancement findings through a rulemaking process; however, to date, the Service has not chosen this option due to the challenges

of keeping the findings current in light of a lengthy rulemaking process.

The application-by-application process involves additional information requirements, time, and staff resources to complete the review of each application. We used to rely mainly on information concerning the national-level management of a species to produce a single enhancement finding for all permit applications specific to a species, country, and time period. We now make enhancement findings for every individual permit application, considering not only national-level species management but also species management on a smaller scale (*e.g.*, on a regional or concession/conservancy-area basis), as well as information about each hunter's individual circumstances, such as the specific hunting dates and locations.

Factors Considered by the Service

In our individual application reviews and enhancement assessments for range countries, we consider factors that can contribute to African elephant conservation by improving the management and status of African elephants in the wild, including:

- Establishing and using science-based sustainable quotas, including use of a sex- and age-based harvest system;
- Investing hunting fees into conservation (*e.g.*, anti-poaching, managing human-wildlife conflict, population monitoring, community benefits that provide incentives for conservation of the species in the wild, etc.);
- Implementing and enforcing, and compliance with, wildlife laws and regulations;
- Implementing management plans and use of adaptive management;
- Implementing an effective anti-poaching program;
- Implementing measures to reduce human-wildlife conflict;
- Monitoring populations of the hunted species and their food source; and
- Protecting and improving the habitat of the hunted species (*e.g.*, creating water holes, habitat management, etc.).

Additional Considerations

In our analysis, we consider the available information on:

- (1) Whether the range country of the hunt has regulations, infrastructure, and standard processes in place to ensure an effective transfer of hunting revenues back into conservation of the species;
- (2) whether the range country has effective governance and strong compliance and enforcement measures,

particularly with regard to their ability to implement the wildlife management regulations developed for the hunted species;

(3) whether the hunting operator is in compliance with the range country's regulatory requirements;

(4) whether the hunting property owner, concessionaire, and/or community are effectively investing the revenue to elicit community incentives for protection of the species; and

(5) whether the hunter is in compliance with the hunting laws, regulations, and operator requirements.

An evaluation of these factors allows the Service to assess how the range-country government manages the hunted species and how hunting serves to enhance the survival of the species in the context of the management system; how hunting serves to enhance the survival of the species in the context of the management unit at the hunting-operator, concessionaire, conservancy, or private-reserve level; and how the individual hunter has contributed (where the hunt has already taken place) or will contribute (where the hunt has not yet taken place) to enhancement of survival of that species through their hunting activities and any associated contributions to the survival of the species. Our process for making enhancement findings encourages conservation investments and sustainability of elephant populations. We evaluate not only national conservation efforts, but also how the hunting operator for the applicant's hunt works to address threats to the hunted species (*e.g.*, making habitat improvements, conducting anti-poaching and other activities, etc.).

The Service's ESA enhancement evaluation includes an analysis of whether the revenue generated through hunting fees is used to support conservation of the species. It is the responsibility of the entity that collects the hunting fees to reinvest those funds back into conservation of the species, including addressing threats to the species that are specific to that area or elephant population. For example, if an agency of the range country's government collects hunting fees, then we expect the government to have standard processes and infrastructure in place to ensure an effective transfer of hunting revenues back into the country's management of the species. If a smaller management unit such as an operator, private property owner, or conservancy is responsible for collecting hunting fees, then we expect a portion of those fees to be reinvested into conservation of the hunted species.

When practicable, the Service conducts site visits or other outreach during which we engage with the national, provincial, and regional governments, as well as communities, to establish whether activities are achieving enhancement of the species. The Service also assists range countries by explaining U.S. requirements for import of personal sport-hunted African elephant trophies and supports capacity-building in range countries. The Service's complementary approach to leveraging conservation of elephants through its ESA regulatory permitting requirement of enhancement of the species, combined with our technical assistance to support capacity-building in range countries, effectively contributes to creating incentives for local communities to protect elephant populations and sustain elephant populations within the range country.

By considering whether the revenues from elephant hunts are effectively reinvested in conservation programs for the species and community benefits, we can determine whether these targeted investments improve the survival of elephants and improve local communities that are working to conserve the species. It can be challenging to obtain the information for a robust analysis, which involves consultation with the range country and often with those involved in various aspects of the hunt, a process that requires a great deal of staff time and other resources. In sum, enhancement findings can be an effective tool for conservation, as trophy hunters are able, by complying with our enhancement requirements, to help conserve elephant populations and their habitats and provide protection incentives to communities that live alongside these species.

Annual Certification for Range Countries

To clarify and improve the permitting process, this final rule adds to 50 CFR 17.40(e)(6) a new provision that establishes an annual certification requirement for range countries that export sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will better 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. In addition, any quotas set by range countries for sport-hunted trophies are typically

established on an annual basis. Reviewing information on an annual basis will allow for monitoring of these yearly quotas and the ability to evaluate adaptive-management approaches in meaningful timeframes.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies increases transparency with stakeholders and enables more efficient evaluations of applications. Although findings for the import of African elephant sport-hunted trophies will continue to be made under an application-by-application basis, application evaluations will be more efficient under these revised regulations because nationwide management information for the species must be provided on an annual basis by the range country. We note that the certification from the range country to the Service can reflect if there are no or minimal changes from one year to the next. This final rule does not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. Additionally, the import of any associated sport-hunted trophy into the United States will continue to be regulated and require an enhancement finding and threatened species import permit. An enhancement determination for African elephant sport-hunted trophies under 50 CFR 17.40(e)(6)(i)(B) and 50 CFR 17.32 will require prior receipt of properly documented and verifiable annual certification provided by the government of the range country to the Service. As stated previously, in consideration of comments received, we have modified the criterion at § 17.40(e)(6)(ii)(A) to include circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing. This revised criterion reads: “(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain sport hunting at the level authorized by the country.”

Additionally, this rule finalizes the proposed list of factors regarding the reporting of funds to be spent towards conservation of the species. Through this rule, § 17.40(e)(6)(ii)(G) includes a non-exhaustive list of concrete examples of how funds derived from activities with African elephants should be used to significantly and positively contribute to African elephant conservation. Considering comments received on the need for additional flexibility for range countries and local communities, in the final rule we have

modified the enhancement criterion that outlines how funds derived from sport-hunted trophy imports should be applied toward African elephant conservation. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild. We have replaced the word “primarily” with “significantly” as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild. This allows us greater flexibility in determining if enhancement has been satisfied based on the information available. We have removed the enhancement criterion that requires 100 percent of African elephant meat from a hunt to be donated to local communities. We recognize there are situations where there are no inhabitants, or other circumstances where it would be inappropriate to include this requirement. We also recognize that this form of support to local communities, if applicable, may also be addressed as a method used to prevent or mitigate human-elephant conflict under proposed paragraph (e)(6)(ii)(G)(7). Accordingly, in this final rule we have removed proposed paragraph (e)(6)(ii)(G)(8).

Aside from these changes, the final rule text at § 17.40(e)(6)(ii)(A)–(G) contains the same list of factors in the annual certification as proposed. The Service will consider these factors as part of the determination whether the import of an African elephant sport-hunted trophy meets the enhancement standard.

Under this final section 4(d) rule, we will continue to require an ESA enhancement finding and issuance of a threatened species permit for import of each African elephant sport-hunted trophy. This requirement will continue to allow us to carefully evaluate each trophy import in accordance with legal standards and the conservation needs of the species. Through this rule, we are clarifying what is considered during enhancement evaluation, by requesting information as part of the annual certification process. While we already consider the information requested in the annual certification process, we will not hold hunters to standards that did not exist at the time of their hunts and

their import applications. The regulations pertaining to sport-hunted trophies will apply to applications for import where the hunt date is on, or after, the effective date of this rule.

Elephant Imports and the CITES National Legislation Project

The provisions of CITES and the ESA and their respective requirements for the issuance of permits for African elephants are distinct and complementary in furthering African elephant conservation. While the United States alone implements the ESA, CITES is implemented by the United States and other national governments. The ability of each Party to fully implement CITES underpins international efforts to conserve and enhance African elephant conservation. For U.S. African elephant conservation efforts to be successful, it is imperative that other Parties have national legislation in place that meets the basic requirements to implement CITES. We therefore amended the previous section 4(d) rule; the final rule makes each exception to the prohibition on import in the section 4(d) rule that applies to live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies contingent on being accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (50 CFR 23.7; <https://www.cites.org>). We will thereby prohibit these imports from any Party that does not meet the basic requirements to implement CITES, and at the same time encourage CITES Parties to amend their national legislation to achieve a CITES Category One designation.

We have identified certain narrow circumstances under which the import of African elephant parts and products other than ivory into the United States from a country that has not achieved Category One under the CITES National Legislation Project may benefit conservation of African elephants, specifically import for law enforcement purposes and genuine scientific purposes. To accommodate these circumstances, we have included limited exceptions to the CITES National Legislation Project Category One requirement for imports for law enforcement purposes and for genuine scientific purposes that benefit the conservation of African elephants. These narrow exceptions parallel and will follow the same requirements as the exceptions for law enforcement purposes and for genuine scientific

purposes currently established for the import of African elephant ivory (50 CFR 17.40(e)(7) and (e)(8)). Additionally, in consideration of comments received, particularly from African elephant range countries, the CITES National Legislation Project Category One requirement will take effect after CITES CoP20 (anticipated to be held in 2025), in order to give range countries additional time to comply with this requirement and to ensure the requirement is supportive of countries making efforts to comply.

The United States is a strong proponent of the National Legislation Project and has provided assistance to countries to help them achieve Category One. For example, in recent years the legislation of Angola and Jordan has been placed in Category One. The United States provided support to Angola and Jordan in their efforts toward these achievements. This provision is designed to have decreasing effect over time and to ensure countries that wish to trade in African elephants with the United States enact and continue to maintain Category One national legislation as a Party to CITES. The CITES National Legislation Project is designed to encourage and assist every Party to achieve Category One designation. When each country achieves CITES Category One designation, by enacting sufficient national legislation to meet the basic requirements of CITES, as required of each Party under the Convention, then this provision will have no effect with regard to that country. For countries that have already achieved Category One, this provision will have no effect, so long as the country remains a Party to CITES and maintains Category One national legislation.

Proposed Rule, Public Hearing, and Public Comments Received

On November 17, 2022, we published a proposed rule (87 FR 68975) to revise the rule for the African elephant, promulgated under section 4(d) of the ESA and codified at 50 CFR 17.40(e). Originally, we opened the public comment period for 60 days, until January 17, 2023. On January 17, 2023, we extended the public comment period for an additional 60 days, to March 20, 2023 (88 FR 2597). On January 5, 2023, we held a virtual public hearing on the proposed changes to the African elephant section 4(d) rule. The hearing was held both in English (including an option for subtitles) and French so that representatives from African elephant range countries could participate. The public hearing was well attended by the public, nongovernmental organizations,

and range countries. A common request during the public hearing was to extend the comment period, which we did. Comments received during the public hearing have been addressed in the comment responses, below.

We received 138,668 comments in response to the proposed rule, including 4 letter-writing campaigns with more than 111,606 signatures. Three of the letter-writing campaigns were in strong support of strengthening the African elephant regulations and proposed that the Service implement a ban on the import of live elephants and sport-hunted trophies. Counting each of the letter-writing campaigns as one substantive comment, approximately 600 of the comments received were substantive. We received comments from individuals, hunting organizations, zoological associations, conservation/environmental organizations, other nongovernmental organizations, range countries, and concerned citizens.

Request for extension of the comment period. We received a number of comments that requested that we extend the public comment period beyond 60 days as originally provided in the proposed rule. We extended the public comment period by an additional 60 days to March 20, 2023, to give the public, stakeholders, and our range country partners an additional opportunity to provide comments and supporting data on the proposed rule.

General comments. It is clear from the comments we received that there are strongly held views in the United States on the conservation and trade in African elephants. Regardless of perspectives and positions, there is overwhelming concern for elephant populations and a belief that the U.S. Government should take steps to protect elephants in Africa. Many commenters urged us to implement a complete ban on the import of live African elephants and/or sport-hunted trophies; others stated that the proposed regulations were too stringent and will lead to less funding available for African elephant conservation. Some commenters provided information in support of their positions; some offered specific suggestions and amendments to the proposed regulatory text; and others offered opinions regarding the protection and conservation of African elephants. In developing this final rule, we evaluated the comments and information received. We note that there were several comments that provided African elephant data but did not reference where that data came from. In these circumstances, we were not able to consider the numbers as we could not confirm the source. We appreciate the

careful consideration given to this proposal by the many groups, organizations, range countries, and individuals who provided comments. A summary and analysis of specific comments that were inside the scope of the rulemaking follows:

(1) Comment: A commenter recommended clarifying that the annual certification requirement is applicable to every country that exports any African elephant specimens. The commenter requested that the Service define what constitutes an African elephant trophy and the appropriate CITES reporting codes (TRO or H) in the CITES trade database. The commenter recommended that the Service use the purpose code “H” as the standard for identifying elephant trophy imports into the United States.

Response: The annual certification requirement applies to all wild-sourced African elephants, regardless of whether the import is for a live or a sport-hunted trophy, as both actions would remove or has functionally removed an elephant from the wild. The import of a captive-bred African elephant from a non-range country will still require an enhancement determination to be made but will not require the annual certification from the range country as the animal would not be removed from the wild. We have defined the term “sport-hunted trophy” at 50 CFR 23.74, and that definition will apply to any African elephant sport-hunted trophies. The term “hunting trophy” includes, among other requirements, the need for the trophy to be “legally obtained by the hunter through hunting for his or her personal use.” Many parts and products imported into the United States are not obtained by hunting or are not solely for personal use of the hunter and would, therefore, not meet the definition.

(2) Comment: Several commenters requested that the annual certification criteria for the import of live African elephants and elephant trophies be strengthened and expanded. Specifically, multiple commenters believe the Service should make clear what type of evidence must be submitted to properly document and verify elephant populations. They requested that the rule specify: who is to make that determination, how many years of population data is necessary to determine a trend, and that that data must be submitted for each elephant population, including transboundary populations, or, at a minimum, for those elephant populations targeted for the potential capture and removal of live elephants in the range country. There were recommendations to require a certification be dated within a year.

Additionally, there was a recommendation that the Service divide the proposed certification requirements into two separate certifications: one that may be submitted on an annual basis and includes the country-wide determinations reflected in proposed paragraph (e)(10)(ii) in criteria (A) through (E) and another that must be submitted on a permit-by-permit basis and includes the import-specific determinations contemplated in proposed paragraph (e)(10)(ii) in criteria (F) through (I).

Response: We have carefully considered the annual certification criteria and conclude that the standards we published in the proposed rule will help provide us with the data to make a conservation-based decision while not being overly burdensome, particularly for range countries. The clarification of the enhancement standards contains the information considered when making an enhancement determination. This includes using the best available data and information on population estimates, including historically and at the present.

(3) *Comment:* A commenter expressed concern that the annual certification requirements for elephant trophy exporting countries will further delay issuance of permits and recommended that the current measures continue with modification to facilitate a more-efficient permitting process.

Response: The information identified as being requested as part of the annual certification process is already currently considered in the processing of applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. Our intent in requiring an annual certification is to clarify the enhancement standards and increase transparency with stakeholders. If there are no or minimal changes from one year to the next, the certification from the range country to the Service will be able to reflect this situation. By requiring certification, this information will be provided by the range country on an annual basis and will improve application evaluation efficiency.

(4) *Comment:* A commenter requested clarification regarding “properly documented” and “certifiable” information that a range country recognizes its African elephants as a “valuable resource” and clarification in the criterion regarding “regulating governments follow the rule of law concerning African elephant conservation and management.” The commenter recommended that the Service request supporting materials

such as the range country’s constitution, statutes, and regulations, policies, management plans/strategies, or other relevant written conservation documents as applicable that provide evidence of its recognition that African elephants are valuable resources. In addition, they commented the Service should require information on conservation and management of its elephant populations, including relevant statutes, regulations, policies, strategies, guidelines, and best management practices at the county, municipal, district, or village levels, depending on how elephant conservation and management are governed.

Response: We have carefully considered the annual certification criteria and conclude that the standards we published in the proposed rule provide us with the data to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. In this rule, we are clarifying the enhancement criteria and will review all information submitted by the range country. Should any additional clarification be required to complete the review of an application, we may request additional information from the range country.

(5) *Comment:* A commenter requested clarification regarding “practical capacity” and whether that term includes the number of employees (*i.e.*, managers, scientists, law enforcement personnel) dedicated to African elephant conservation, the amount of funding available for elephant conservation, and the political will of the government and its leadership to conserve elephants.

Response: Conservation programs across range countries differ. We expect that revenues generated from the activity of the removal of the elephant from the wild will be reinvested into the conservation of the species and combat threats to the populations within the range country. Each range country will be required to provide documentation to explain how this is achieved.

(6) *Comment:* A commenter requested clarification regarding the phrase “the current viable habitat of these populations is secure and is not decreasing or degrading” and ensuring confirmation that that habitat is not decreasing in quantity or quality, or not being degraded by natural or anthropogenic factors. The commenter recommended that range countries: (1) identify any existing potential threats to viable elephant habitat, such as timber

harvest, mining, road construction, authorized or unauthorized development, livestock grazing, climate change, wildfires (particularly those intentionally set by humans), land clearing and conversion, and poaching; and (2) articulate the specific actions taken to prevent, reduce, or mitigate such threats. Further, the commenter believed that range countries should be asked to provide copies of any laws, regulations, and management plans that govern land uses and extractive industries that may pose threats to the quantity and quality of viable elephant habitat to ensure that such legal standards are sufficient to manage the impact of threats to elephant habitat.

Response: Our intent under the section 4(d) rule is to clarify the enhancement standards and increase transparency with stakeholders. Through this rule, we are clarifying what information from the range country is considered during enhancement evaluation, by requesting the information as part of the annual certification process. Due to the required certification, the range country will provide this information on an annual basis, which will improve application evaluation efficiency. The information requested as part of the annual certification process is already currently considered in the processing of applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. We recognize that what may qualify as enhancement is likely to vary due to regional, national, and local ecological realities.

(7) *Comment:* Several commenters requested clarification on the criterion that “the elephants have been considered for in situ conservation programs, and consideration has been given to moving elephants to augment extant wild populations or reintroduce to extirpated ranges” and how the Service will ensure range countries provide properly documented and verifiable information demonstrating consideration of using the elephants for in situ conservation programs, to augment extant wild populations, or to reintroduce to extirpated ranges. Specifically, a commenter stated the Service should require the following: (1) Identify by name the government official and agency and/or park or area administrator contacted regarding an in situ conservation transfer, a wild elephant population augmentation project, and/or a reintroduction effort; (2) provide copies of correspondence with the government agency, person, or other entity administering the area; (3)

provide documentation to confirm that such outreach to potential in situ conservation, augmentation, and reintroduction programs both domestically and within the natural range of African elephants has been undertaken; and (4) include in its certification package written evidence as to why none of the options pursued were feasible. The commenters requested clarification about the methodologies regarding reproducible counting, surveying, or assessing elephant populations and recommended that if extrapolation is used to estimate elephant population size, underlying assumptions should be disclosed. Additionally, they suggested requiring the applicant to demonstrate that it has consulted with the IUCN African Elephant Specialist Group. The commenters suggested inserting language into the rule that would require range countries to demonstrate why in situ placements are unattainable for the elephant that has been approved for export. Lastly, it was suggested that the rule clarify that revenue a range country would make cannot be used as a basis to justify rejection of viable in situ or wild placements.

Response: While the form of documentation suggested by the commenter would be a useful way to meet the criterion, the information may come in different forms from different range countries. To ensure we are not being overly burdensome on range countries while still receiving the appropriate information to make an informed conservation decision, in this final rule we are not overly prescriptive about the form of documentation provided. Should any additional clarification be required to complete review of an application, we may request this information from the range country. The rule requires prior receipt of properly documented and verifiable annual certification provided by the government of the range country that the elephants have been considered for in situ conservation programs, and consideration has been given to moving elephants to augment extant wild populations or reintroduce to extirpated ranges.

(8) Comment: A commenter requested that the Service make clear in the final rule that the burden of providing the information for the requisite enhancement findings for range countries desiring to export live elephants and/or elephant trophies to the United States must fall on the range country and not on the individual permit applicant.

Response: The burden to provide sufficient information to approve a

permit application remains on the applicant, as with all ESA permits. The ESA states explicitly (in section 10(g)) that a person seeking the benefit of an exception bears the burden of demonstrating that the exception is met. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import will not meet the criteria for an enhancement finding, and, consistent with both the previous regulations and the regulations in this final rule, cannot and will not be authorized for import into the United States. However, certain necessary information may be available only from the range country. This final rule seeks to streamline and improve transparency around the permitting process and better ensures the Service is provided necessary information when making decisions on applications. As the African elephant is listed as a threatened species under the ESA, import of African elephant sport-hunted trophies is limited to activity that enhances the survival of the species in the wild. This final rule clarifies the enhancement criteria for our assessment of an application for the import of an African elephant sport-hunted trophy. Applications will continue to be evaluated on an application-by-application basis, but the clarified enhancement criteria include the requirement to obtain information on the status and management of the African elephant within the range country on an annual basis.

(9) Comment: A commenter recommended additional alternatives that do not include the assumption that trophy hunting promotes conservation and consider the beneficial economic impacts from non-consumptive activities.

Response: The section 4(d) rule does not include an assumption that trophy hunting promotes conservation. We have previously described in the proposed rule and prior rulemakings how a well-managed trophy-hunting program can contribute to conservation. We acknowledge that not all trophy hunting is part of a well-managed program, and we evaluate the import of sport-hunted trophies carefully to ensure that all CITES and ESA criteria are met. The clarification of the ESA enhancement criteria seeks to increase transparency with stakeholders when making this evaluation. Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs,

mitigation efforts for human-wildlife conflict, and law enforcement efforts. The IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) note that well-managed trophy hunting can “assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods” and, further, that well-managed trophy hunting is “often a higher value, lower impact land use than alternatives such as agriculture or tourism.” When a trophy-hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. The ESA enhancement standards in the rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting.

(10) Comment: A commenter supported additional regulations along with expanding the Category One designation to include additional species and tying issuance of any permits to the status of the exporting or re-exporting party’s CITES implementing legislation.

Response: This rule relates to section 4(d) regulations for African elephant only. Considering use of the CITES Category One requirement for additional species is beyond the scope of this rulemaking.

(11) Comment: Several commenters stated that the CITES Category One requirement has no conservation benefit and goes against the intention of CITES, because there is no correlation between a country having Category One status and the success of their conservation efforts. They suggested that the Service assist range countries to achieve Category One status, as the Service has for other countries, instead of what they consider to be a more punitive approach. Several commenters, including several range countries, expressed concerns about the impact of Category One requirements on range countries and the potential to prematurely prohibit trade and sport hunting if applied. Some commenters suggested that CITES Category One status be a minor consideration and not a requirement under the final rule.

Response: We appreciate and understand the concern of several commenters, including several range countries, regarding implementation of the Category One requirement and the effect it may have on range countries and trade. Accordingly, we have finalized the CITES National Legislation Project Category One requirement to take effect after CITES CoP20 (anticipated to be held in 2025). We made this change to give range countries additional time to comply with this requirement and to ensure the requirement is supportive of countries making efforts to comply. As explained above, achieving Category One status of the CITES National Legislation Project is accomplished by meeting the basic requirements to implement CITES through the Party's adoption of national laws to implement the treaty. These requirements include designating at least one Management Authority and one Scientific Authority, prohibiting trade in specimens in violation of the Convention, penalizing such trade, and confiscating specimens illegally traded or possessed. Allowing imports only from countries that have achieved a Category One designation under the CITES National Legislation Project will improve confidence that the exporting or re-exporting country has the capacity to appropriately implement requirements for trade in African elephants and enforce protections for the species.

(12) Comment: A commenter recommended more transparency in elephant relocations and to publish the notice of the certification of applications and allow for public comment on the information.

Response: We did not propose to, and this final rule does not, require publication of receipt of applications or permit decisions for African elephants. The final rule is consistent with other applications received for an ESA permit for a threatened species under 50 CFR 17.32(a).

(13) Comment: Many commenters stated that importing live or dead elephants into the United States does not enhance the species' conservation in the wild, as required by the ESA. They stated that the Service has no effective way to ensure that any import of an African elephant (or elephant trophy) promotes the conservation of the species and suggested the rulemaking prohibit or ban the import of both live elephants and their trophies.

Response: Import of African elephants is already prohibited by the section 4(d) rule, subject to certain exceptions provided for in the regulations implementing the section 4(d) rule. This

final rule amends several of those exceptions to the prohibition on import, as described herein, including to add an import permit requirement for live elephants, clarify and improve the transparency and efficiency of enhancement finding requirements for sport-hunted trophies, and include requirements related to the CITES National Legislation Project. However, as explained above and in the proposed rule, this final rule does not include a ban on import of African elephants without exception. In addition to being unprecedented for endangered or threatened species under the ESA, a complete ban on the import of live elephants could require institutions exhibiting African elephants to rely on captive-breeding programs to replenish their stock, which could affect opportunities for genetic material exchanges. In addition, since elephants may face human–elephant conflict, for example as a result of their impact on local agriculture, some amount of culling could continue to occur despite a ban. A ban of this nature would conflict with efforts to encourage well-managed elephant conservation efforts by range countries that are engaged in this trade. Rather, we intend the amendments to the section 4(d) rule to continue to encourage African countries and people living with elephants to enhance their survival and provide incentives to take meaningful actions to conserve the species and put much-needed revenue back into elephant conservation. This rule also ensures that we do not allow imports in circumstances where elephants are not well-managed and better ensures that any live elephants in trade and their offspring are well taken care of throughout their lifetimes.

(14) Comment: A commenter stated that while the Service has statutory authority under the ESA to require permits for interstate commercial transfers of endangered or threatened species, it does not have authority to require permits for noncommercial transfer. In addition, the commenter believed that the Service's interpretation of "industry or trade" within the definition of "commercial activity" is unlawful and will restrict the intended limitations on the use of live elephants in interstate commerce in the course of a commercial activity.

Response: Potential amendments to the current definition of "industry or trade" in 50 CFR 17.3 are outside the scope of this rulemaking. The regulations at 50 CFR 17.3 define "industry or trade" in the definition of "commercial activity" in section 3 of the ESA to mean "the actual or intended

transfer of wildlife or plants from one person to another person in the pursuit of gain or profit." Whether a proposed activity is "in the course of a commercial activity" involves considering whether, based on the facts, the proposed activity is "in pursuit of gain or profit" for either party to the intended transfer. While it is not entirely clear which activities with elephants are of concern to the commenter under the current definition, we take this opportunity to provide examples that would meet the definition of "industry or trade" under 50 CFR 17.3 in addition to buying, selling, or offering to buy or sell. Example: listed wildlife is held in captivity, and the owner offers to send the animal to a second owner of listed wildlife as a breeding loan in exchange for half of the offspring produced from the breeding loan. The wildlife has been held or used in the course of a commercial activity—the offer for a breeding loan in exchange for offspring produced from the breeding loan was an intended transfer of wildlife from one person to another person in the pursuit of gain or profit. The results of this example would be the same if the first owner had loaned the animal to the second owner for a week in exchange for monetary compensation. The results of this example would also be the same if the owner received nothing in return for the temporary transfer, but the second owner intended to gain or profit by selling or otherwise commercializing the offspring.

(15) Comment: A commenter believed the Service is imposing its own animal-care standards on a zoo that may be receiving an animal for a noncommercial purpose.

Response: In Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: Prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 and revised at CoP18, and related guidance on live elephants was adopted at CoP18 and CoP19 (all three of those CITES meetings took place after our finalization of amendments to the section 4(d) rule for African elephants in 2016) and present new reasons to reconsider our domestic regulation of live African elephants under the ESA. As explained above, to assist Parties in undertaking the obligations of CITES

Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*. Taxon-specific guidance for African elephants was subsequently developed by a working group of the CITES Animals Committee, *Nonbinding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it*, and endorsed by the CITES Standing Committee for consideration of CoP19. The CITES guidance was developed with participation by industry stakeholders, including the AZA, and the United States was a member of this working group. CoP19 subsequently considered and adopted the guidance, CoP19 Doc. 48; CoP19 Plen. Rec. 2 (Rev. 1). According to this guidance, arrangements should be made to ensure that any subsequent sale, donation, or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen pursuant to the standards of CITES.

(16) Comment: A commenter believed the regulations should go further and that the Service, AZA, other zoological associations, and individual zoological parks should phase out African elephants from public display. The commenter explained that this could be done by ceasing all breeding, allowing the animals to live out their lives in their current facilities or transferring them to well-managed sanctuaries, and prohibiting the future import of African elephants. Lastly, the commenter requested that the Service not consider exhibition or conservation education as enhancement.

Response: We disagree with the suggestion to phase out African elephants on public display as such elephants play an important role in conservation awareness and efforts. The standards in this final rule for live African elephants are based on guidance from several CITES meetings. As explained previously, to assist Parties in undertaking the obligations of Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*. CoP19 adopted further taxon-specific *Non-binding guidance for determining*

whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it.

According to this guidance, arrangements should be made to ensure that any subsequent sale, donation, or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen.

(17) Comment: A commenter opined that the only facilities that should be considered “suitably equipped” to house live African elephants are accredited sanctuaries, as these facilities specialize in rehabilitating abused and traumatized elephants, while providing conditions and care aimed at restoring both physical and psychological health.

Response: “Suitably equipped to house and care for” findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. The evaluation for permits for live African elephants under this final rule will consider the same criteria and requirements found in 50 CFR 23.65 and applied during import of a live African elephant. This incremental increase in requirements for activities with live African elephants is well-tailored to the conservation needs of the species in light of current CITES guidance and recommendations.

(18) Comment: A commenter suggested the Service clarify when a special purpose permit would be needed for transfer of a live African elephant. Specifically, they pointed out a potential loophole in the proposed rule: if the same person or organization has multiple facilities, they would not need a special purpose permit even if some of their facilities did not meet the standards outlined in the proposed rule. Additionally, they questioned if a special purpose permit would be needed if an elephant was leased to another person.

Response: We clarified the language in this final rule. Our intention in the proposed rule was to ensure that any time an African elephant is moved, the intended recipient must be suitably equipped to house and care for the specimen at the location where it is to be housed and cared for, regardless of the nature of the transfer. We have revised the language in proposed paragraph (e)(10)(iv) to clarify that each special permit to transfer an elephant must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person or location without a special purpose permit. Adding the requirement

that the permittee be authorized by permit to transfer an animal to another location (e.g., to a facility located on a different premises, or pursuant to a temporary loan or lease) adds clarity to the permit’s condition.

(19) Comment: A commenter suggested that the final rule state that the Service must seek advice from the Animals Committee about whether the proposed transfer is a suitable “exceptional circumstance.” They suggested that if the Animals Committee concludes that a proposed transfer is not an exceptional circumstance, the Service should not allow the import.

Response: The comment refers to the CITES process under Resolution Conf. 11.20 (Rev. CoP18) for export outside the species’ natural and historical range in Africa of wild-sourced live African elephants from a population with an “appropriate and acceptable destinations” annotation. Additionally, at CoP19, the Conference of the Parties adopted Decision 19.168, which temporarily extends the same process to all exports of wild-sourced live African elephants outside the species’ natural and historical range in Africa. The Service would seek advice from the Animals Committee, and consider any advice provided, in reaching a decision on an application to import live elephants subject to an applicable CITES process. As explained in our proposed rule, the U.S. Government’s understanding of the process established by Resolution Conf. 11.20 (Rev. CoP18), paragraph 1, is that, under the resolution, and currently under Decision 19.168, the Animals Committee has a consultative role, meaning it is given an opportunity to advise the Parties involved (the exporting country and the importing country) on whether the proposed trade meets the exception. In its role, the Animals Committee does not make the decision—the Animals Committee’s advice does not allow or disallow the trade—and the Animals Committee does not need to agree with the Parties’ decisions. It is for the Parties concerned to consider any advice offered by the Animals Committee and any other relevant information that may be available to them and make their own decisions on whether to allow the trade.

(20) Comment: A commenter stated that the Service did not include several aspects covered by the CITES *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*, as well as new guidance agreed at CITES CoP19 specific to African elephants. The commenter suggested that the rule include all

guidance, as well as in subsequent revisions to 50 CFR part 23.

Response: As previously noted, CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*, and CoP19 adopted further taxon-specific *Non-binding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it*. This guidance will aid the Service in determining whether live African elephants are going to facilities that are suitably equipped to house and care for them when it makes findings in accordance with 50 CFR 23.65. We note that our regulations in 50 CFR 23.65 enable us to consider the factors in the non-binding guidance adopted by the Parties at CoP18 and CoP19, as applicable to a specific situation when making a suitably equipped to house and care for finding. However, further amendments to 50 CFR 23.65 are outside the scope of this rulemaking and may be considered in subsequent revisions to 50 CFR part 23.

(21) *Comment:* In relation to the needs of elephants in captivity, several commenters pointed to reports on African elephant biology, ethology, and social structure and provided literature that states African elephants are wide-ranging, vastly intelligent, sentient beings with a highly organized social structure who form strong family bonds that can last a lifetime. The commenters stated that African elephants require access to large, complex, stimulating ecological and social environments, and the freedom to exercise choice over their foraging options and companions. The commenters suggested that live African elephants have 100 hectares or more of diverse, natural habitat so individual elephants have the opportunity to live fulfilling lives.

Response: The needs of elephants in captivity, including space and behavior, are considered and addressed in our finding as to whether or not the proposed recipient is suitably equipped to house and care for the live elephant(s), made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65.

(22) *Comment:* Several commenters believed the African elephant care standards in the proposed rule are unnecessary as the requirements are already covered by CITES provisions. In addition, they claimed there is no evidence of an ESA concern, and they believed the regulations would be an unnecessary regulatory burden and the

Service would be implementing regulations beyond its scope and mission if it is unable to show a conservation need that has arisen since the finding in its 2016 rulemaking. They believed there is no African elephant conservation-related basis for including the additional provisions related to import and domestic holding and movement of elephants. In addition, the commenters believed the additional provisions will likely impede movements of elephants for breeding purposes to support a sustainable population in human care. They stated that the U.S. Department of Agriculture (USDA) has a clear mandate to implement and enforce the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*), which they believe is adequate to ensure that elephants are well cared for in the United States. They stated that the proposed regulations may undermine African elephant conservation because the Service cannot keep up with permitting responsibilities and the proposed regulations will add to the burden. Lastly, they stated that if the Service does finalize the regulations, they should require AZA accreditation as prima facie evidence that these standards are already being met.

Response: The standards in the proposed rule for live African elephants are based on guidance from several CITES meetings. In Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: Prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 and then revised at CoP18 (both of those CITES meetings took place after our finalization of amendments to the section 4(d) rule for African elephants in 2016) and present new reasons to reconsider our domestic regulation of live African elephants under the ESA.

To assist Parties in undertaking the obligations of Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted: *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*. To address taxon-specific considerations, CoP19 further adopted: *Non-binding guidance for determining whether a proposed recipient of a living specimen of African*

elephant and/or southern white rhinoceros is suitably equipped to house and care for it. According to this guidance, section A, paragraph 8, “arrangements should be made to ensure that any subsequent sale, donation or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen.” Additionally, we find that it is appropriate to adopt the “suitably equipped to house and care for” provisions outlined in the proposed rule as USDA does not conduct “suitably equipped to house and care for” findings under the AWA. Lastly, we do not agree that requiring AZA accreditation as prima facie evidence that the standards are already being met would be adequate in implementing the CITES guidance. As explained in the CITES guidance, “[m]embership in a recognized Zoo association can provide further reassurance that the destination adheres to the standards and guidelines of that association and helps to exchange males to prevent inbreeding, but it is as such neither a pre-condition for assessment of an appropriate destination, nor a proof that the facility is an appropriate and acceptable destination.” We will utilize the CITES guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it. This guidance will be used with the factors found in 50 CFR 23.65. As noted in the proposed rule, U.S. facilities that have previously been authorized to import live elephants under CITES have complied with “suitably equipped to house and care for” requirements at 50 CFR 23.65.

The Service expects that any facility wishing to accept a transferred live elephant will take necessary steps also to comply with these standards. For any facility that complies with these standards, these new permitting requirements will impose a small recordkeeping and fee burden on these facilities and will ensure that any subsequent transfer of the live elephant or its offspring from these facilities is also only to facilities that are suitably equipped to house and care for live elephants. This rulemaking addresses more than AZA facilities and applies to transfer of African elephants by any individual or entity in the United States, including both AZA and non-AZA institutions. According to the AZA, of the approximately 2,800 animal exhibitors licensed by the USDA across the country, fewer than 10 percent are AZA-accredited.

(23) *Comment:* A commenter opined that the “suitably equipped to house and care for” standards are unnecessarily rigid and African elephant welfare is less about available space and more about how that space is utilized. They mentioned several studies that they claimed prove that good elephant welfare is not about facility space but about individualized care for specific animals within specific circumstances.

Response: Living-space requirements fall outside of scope of this rule. However, we will utilize the CITES guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it. This guidance will be used with the factors found in 50 CFR 23.65.

(24) *Comment:* A couple commenters stated that the proposed rule does not hold zoos accountable to meet the necessary standards for providing a benefit to elephants. They suggested that zoos must submit evidence that their elephant exhibits measurably improve public education and lead to actions promoting conservation of the species, to prove their interests are noncommercial.

Response: The section 4(d) rule requires issuance of an import permit prior to import of elephants into the United States, which will require zoos or other importers or exporters to demonstrate a conservation benefit to elephants in the wild in order to support an enhancement finding for the proposed activity. While the Service could have gone further under the authority of the ESA, for example by also requiring a separate enhancement finding for each transfer, as is required for interstate commerce in endangered wildlife, we found that the more incremental increase in requirements in this rule was well-tailored to the conservation needs of the species in light of current CITES recommendations. The needs of elephants in captivity are considered and addressed in our finding as to whether the proposed recipient is suitably equipped to house and care for the live elephant(s), made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65.

(25) *Comment:* A commenter suggested the Service add several additional parameters regarding live African elephants and recommended that the Service add specific criteria tailored to the species regarding food and water requirements, access to an off-exhibit area, staff training and experience, and suitable veterinary care. The commenter urged the Service to

require that elephants not be housed alone and that offspring remain with their mothers until they are naturally weaned. The commenter requested the Service not allow the use of bullhooks, also known as goads. The commenter urged the Service to consider climate conditions when assessing the sufficiency of the space available for African elephants under 50 CFR 23.65(c)(1). The commenter suggested the Service make a finding that the proposed activity is not for primarily commercial purposes, relying upon the criteria set forth under 50 CFR 23.62.

Response: The needs of elephants in captivity are considered and addressed in our finding as to whether the proposed recipient is suitably equipped to house and care for the live elephant(s), made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. In addition, to assist Parties in undertaking the obligations of Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it*. CoP19 adopted further taxon-specific *Non-binding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it*. This guidance will be used with the factors found in 50 CFR 23.65.

(26) *Comment:* A commenter believed that the rule will undermine conservation efforts and hamper the ability of zoos to effectively manage animal groups to sustain a genetically diverse and biologically sound population. The commenter stated that transfers of live elephants domestically is frequently done for breeding purposes related to species survival plans, that identify population goals and recommendations to manage a genetically diverse, demographically varied, and biologically sound population, and to support conservation and education efforts related to these species.

Response: We understand the importance of these programs to support conservation and education efforts related to African elephants and their habitat. The rule will not prohibit those programs but will ensure that live elephants are going only to facilities that are suitably equipped to house and care for them, helping ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on

elephants from the wild and increasing the long-term conservation and survival of elephants in the wild by reducing the overall number of imports to maintain elephants in captivity in the United States.

(27) *Comment:* A commenter recommended stricter regulations on trade in elephant parts (non-ivory, trophy, or live elephants) that will include an ESA permit. The commenter provided information regarding the demand for other products including elephant hides that may negatively impact the survival of the species.

Response: We disagree with the concern that the limited legal trade in elephant parts and products other than ivory and sport-hunted trophies may negatively impact the survival of African elephants. We are aware of no information to indicate that legal trade for commercial use in compliance with CITES of elephant parts and products other than ivory and sport-hunted trophies has had any effect on the rates or patterns of illegal killing of elephants and the illegal trade in ivory. However, the CITES National Legislation Project contains several requirements related to enforcement actions due to illegal trade. By allowing imports of parts and products only from Category One countries, with limited exceptions for law enforcement purposes and genuine scientific purposes, we are ensuring that parts and products are imported into the United States only by countries able to fully implement the CITES Treaty.

(28) *Comment:* A commenter questioned the applicability of the rule to the progeny of wild-caught African elephants or to the movement of biological samples, including semen. The commenter opined that the public cannot properly comment on the proposed rule without further clarification on these points.

Response: The preamble to the proposed rule and this final rule provide information regarding the trade in live African elephants and their offspring, including care of live elephants after import and other permitted transfers. Parts and products other than ivory and sport-hunted trophies continue to be excepted from the ESA permitting requirement under the rule. However, the import of those items will be restricted to Category One countries under the CITES National Legislation Project, meaning they will be imported, with limited exceptions for law enforcement purposes and genuine scientific purposes, only from countries that have met the requirements to implement the CITES Treaty and only in accordance with CITES permitting requirements.

(29) *Comment:* A commenter expressed concern that there is no recognition of the benefit that sport-hunting fees can have on the construction of schools, medical facilities, water sources, sewage, or other improvements in living conditions or development of any kind, and that the Service specifies only what the community must add regarding the conservation of elephants. The commenter requested that the Service expand the requirements for use of funds derived from a sport hunt if enhancement has been met.

Response: Our intent under the section 4(d) rule is to clarify the enhancement standards and increase transparency with stakeholders. Through this rule, we are clarifying what is considered during enhancement evaluation, and including a non-exhaustive list of concrete examples of how funds derived from activities with African elephants should be used significantly and positively to contribute to African elephant conservation. In this final rule, in consideration of comments received on the need for additional flexibility for range countries and local communities, we have modified the enhancement criterion that outlines how funds derived from live elephant and sport-hunted trophy imports should be applied toward African elephant conservation. To allow us greater flexibility in determining if enhancement has been satisfied based on the information available, we have replaced the word “primarily” with “significantly” as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild.

(30) *Comment:* Several commenters recommended that the Service withdraw the rulemaking because they believe the Service failed to consult meaningfully with range countries. The commenters stated that the Service did not meet procedural obligations for consultation under CITES Resolution Conf. 6.7 on *Interpretation of Article XIV, paragraph 1* prior to adopting stricter domestic measures under the

ESA. The commenters stated that the Service failed to consult with range countries on how the proposed rule would affect the range countries’ conservation and management programs of elephants, elephant habitat, human-wildlife conflict, and community-based natural-resources-management programs.

Response: We disagree with the commenters that there are legal obligations for consultation under CITES Resolution Conf. 6.7 and that we have failed to consult meaningfully with range countries. While the recommendations in CITES Resolution Conf. 6.7 are not legally binding, the United States makes a concerted effort to implement the CITES Resolutions because we acknowledge that they represent the interpretation and longstanding guidance of the CITES Conference of the Parties for effective implementation of the Convention. We note that under article XIV, paragraph 1 of the Convention, each Party retains the right to adopt stricter national measures that regulate or prohibit the import, export, taking, possession, or transport of any CITES species. In Resolution Conf. 6.7, the Parties recommend that prior to taking such actions for non-indigenous species as are allowed under article XIV, paragraph 1, Parties “make every reasonable effort to notify the range countries of the species concerned at as early a stage as possible prior to the adoption of such measures, and consult with those range countries that express a wish to confer on the matter.”

In promulgating this rule, we have made every reasonable effort to notify range countries and have consulted with range countries that have expressed a wish to confer on the matter, following the text, spirit, and intent of the Resolution during the public-comment process for the proposed rule. Publishing a proposed rule does not inhibit the consultation process. Rather, it gives the range countries, and the public, draft regulations and agency reasoning on which to comment. This rulemaking comment process often leads to a more robust consultation process and, as here, improves the final rule adopted by the agency. During the public-comment period on the proposed rule, which was originally open for 60 days and then extended for an additional 60 days (for a total of 120 days), we hosted a virtual public meeting and also accepted written comments. During the public-comment period, we offered to conduct individual African elephant range country consultations. Several range countries took us up on our offer, and we held consultations for every range country

that made a request. Noting the above, we conclude that we have meaningfully consulted with range countries.

(31) *Comment:* A commenter stated that proprietary operator and government information should not be broadcasted.

Response: The rule does not require publication of notices of receipt of applications or permit decisions, consistent with other applications received for an ESA permit for a threatened species under 50 CFR 17.32(a).

(32) *Comment:* A commenter opined that any revisions to the African elephant section 4(d) rule should only apply prospectively to applications to import a sport-hunted trophy after the effective date of the new rule.

Response: We have amended the final rule accordingly, so the new regulations at 50 CFR 17.40(e)(6)(ii) pertaining to import of sport-hunted trophies will apply where the hunt date is on, or after, the effective date of this rule.

(33) *Comment:* A commenter stated that any standard that delays the processing of trophy imports or could be used as an angle in a lawsuit to support anti-hunting arguments against hunting and its benefits should be removed from the rule.

Response: The intent of the rule is to clarify the enhancement standards and increase transparency with stakeholders. The standards in the rule clarify what is considered during enhancement evaluation. By requiring annual certification, information will be provided by the range country on an annual basis and will improve application evaluation efficiency.

(34) *Comment:* Several commenters urged the Service to strengthen the enhancement permit requirements for sport-hunted trophies. Suggestions included requiring scientific evidence and methodology for how the elephant trophy will enhance the survival of the species; requiring specific demographic information on the local, neighboring, and range-wide populations; requiring a range country to have scientifically based population data and a funded plan to continue monitoring for population trends; reviewing of any CITES trade suspensions; requiring joint management plans between countries with shared elephant populations that are subject to trophy hunting; ensuring regulating governments follow the rule of law concerning African elephant conservation and management; ensuring range countries have the capacity to reliably ensure that trophies have been lawfully taken; and denying any permit application if a hunt was completed without the presence of a guide who is

properly licensed by the host country. Additional recommendations included requiring that permit applications report the hunting methods used; the amounts paid for hunting services, permits, and any other fees; information on the payees; and information on anyone else involved in the hunt (guides, observers, etc.) and their affiliations and licensures.

Response: We have carefully considered the criteria and conclude that the standards we published in the proposed rule provide us with the data needed to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. Should any additional clarification be required to complete review of an application, we may request additional information from the range country. The purpose of this rule is not to disincentivize trophy hunting when it is conducted within the bounds of a well-regulated, scientifically supported management system. Rather, the purpose of this proposed rule is to clarify what factors are considered as part of the determination of whether the import of an African elephant sport-hunted trophy meets the enhancement standard. We consider all relevant conservation threats when making enhancement findings and conduct a robust science-based analysis of species conservation before issuing permits for the import of ESA-listed sport-hunted trophies. The information provided to address the certification criteria must be scientifically based and verifiable, as reflected in the rule, which requires prior receipt of documented and verifiable certification related to each of the certification criteria.

(35) Comment: Several commenters were concerned that the requirements for determining elephant population and status trends over very large land areas be updated annually by range countries via aerial survey were expensive, unreliable, and unreasonable. They stated that annual monitoring is not needed for such a long-lived species, and far better systems for monitoring the sustainability of hunting through triangulation and adaptive management exist. They suggested the Service use trophy quality as a metric and not population status. They requested that, at a minimum, the Service extend the required population surveys to every 5 years.

Response: Our intent under this rule is to clarify the enhancement standards and increase transparency with

stakeholders. Through this rule, we are clarifying what we consider during enhancement evaluation, by requesting the information as part of the annual certification process. By requiring certification, this information will be provided by the range country on an annual basis and will improve application evaluation efficiency. We already consider the information requested as part of the annual certification process in the processing of applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. We recognize that what may qualify as enhancement is likely to vary due to regional, national, and local ecological realities and will not be uniform across these scales. We disagree with the commenter's assessment that population-trend data is not necessary for determining the conservation status of a species. We agree that this data should not be analyzed by itself and additional circumstances must be considered.

In the process of determining enhancement, we are evaluating whether trophy hunting (and subsequent import), as a conservation measure, is likely to reduce the threat of extinction facing the species. To make this determination, we must fully understand the conservation status of the African elephant population within a range country, including population status or trend data related to the species as a whole. We are not requiring that each criterion be updated annually if doing so is not appropriate or feasible. If there are no or minimal changes from one year to the next, the certification from the range country to the Service can reflect this status. Rather, under this rule, we will require a verifiable certification that the criteria have been met. If our evaluation determined that the requirements were no longer met, we will work with the range country to communicate and address any concerns. We will continue to consider all findings on an application-by-application basis and take into account the conservation realities of the hunt area and the individual hunter.

(36) Comment: Several commenters believed that language requiring African elephant populations needing to be "stable or increasing," as well as sufficiently large to sustain sport hunting at the level authorized by the country, is vague and unreasonable in certain circumstances, as some areas may require increased elephant quotas, more protection, or elephants regularly traveling between multiple countries. The commenters provided examples

such as overpopulation of African elephants, which are degrading habitat, in some areas and that in some of these areas increasing or maintaining the size of the population would not necessarily provide enhancement for the conservation of the species.

Response: We have amended the final rule accordingly. We have revised the enhancement criteria that requires African elephant populations in a range country to be stable or increasing for import of live African elephants and sport-hunted trophies. We have replaced the term "stable or increasing" with "biologically sustainable." The term "biologically sustainable" gives us flexibility when making our enhancement determinations and allows us to consider circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing, such as possible scenarios where African elephants are overpopulated and have a negative impact on habitat and biodiversity. The clarification of the enhancement criteria supports the evaluation on whether the proposed activity will contribute toward the recovery of the species in the wild. The import of each specimen must meet this standard.

(37) Comment: A commenter disagreed with the Service's proposed evaluation of habitat quality as enhancement criteria. The commenter stated that there are too many factors to consider, some of which cannot be controlled by communities or range countries.

Response: We disagree. The analysis of habitat quality is an essential metric for determining the conservation status of a species in the wild. This information can be acquired using scientifically supported methods and is a common metric used in management decisions across the world. Similarly, we understand that communities and private landowners are essential for the conservation of African elephant habitat. However, this relationship falls under a legal framework that is regulated and enforced by a governmental body. We must ensure that the activity performed falls within this legal framework and is approved by a regulating government.

(38) Comment: Several commenters expressed concern that the regulations for sport-hunted trophies will reduce beneficial trade and not benefit African elephants. The commenters explained that, given the rigor of CITES, the proposed regulations are redundant and unnecessary. The commenters stated that the Service has not provided

scientific or economic justification and the regulations will undermine conservation incentives, since hunting revenues benefit range countries and African elephant conservation.

Response: Our intent under the new regulations for sport-hunted trophies is to clarify the enhancement standards and increase transparency with stakeholders. Through these regulations, we are clarifying what we consider during enhancement evaluation by requesting the information as part of the annual certification process. The certification requirement will lead range countries to provide this information on an annual basis, improving application evaluation efficiency. We already consider the information requested as part of the annual certification process when we process applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. We acknowledge that well-managed trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human-wildlife conflict, and law enforcement efforts. The IUCN Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) note that well-managed trophy hunting can “assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods” and, further, that well-managed trophy hunting is “often a higher value, lower impact land use than alternatives such as agriculture or tourism.” When a trophy-hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. The ESA enhancement standards in the rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting.

(39) *Comment:* A commenter asked the Service to further clarify the term “funds derived” in paragraph (e)(6)(ii)(G) of the proposed rule and recommended that the term include all funds associated with trophy hunting, including permit fees, hunting guide

costs, and any other amounts paid by trophy hunters and any other individuals or organizations involved with the hunt. The commenter also suggested that the term include the gross amounts, and not just net profits derived from the hunt. Lastly, the commenter recommended that the Service require that 100 percent of “funds derived” be applied to African elephant conservation.

Response: Funds derived from sport-hunting is broadly defined. We will consider any and all verifiable information provided in our determination of whether the funds contribute to African elephant conservation. We expect that revenues generated from the activity of the removal of the African elephant from the wild will be reinvested into the conservation of the species and combat threats to the populations within the range country. Each range country will be required to provide documentation to explain how this reinvestment is achieved. However, it is unreasonable to expect that all funds be applied to African elephant conservation. Such a requirement would be counterproductive to elephant conservation as it could remove financial incentive for local communities and private landowners to conserve and protect African elephant populations or habitat.

(40) *Comment:* A commenter suggested that the Service develop a fair-chase standard and require trophy import permit applicants to demonstrate that a given hunt meets this standard. The commenter suggested that failure to meet this standard should result in denial of the permit application.

Response: The Service does not authorize or prohibit hunting in foreign countries. Range countries will decide whether to establish a fair-chase standard. To the extent that management measures (including application of fair-chase standards) affect the survival of the species in the wild, we will consider them as part of our overall enhancement determination.

(41) *Comment:* A commenter suggested that the Service should require range countries to report at least 10 years of historical elephant conservation funding, the origins of that funding, how that funding was used, and the successes and failures of conservation projects. The commenter suggested that the Service require that the historical, 10-year average of hunting revenues do not exceed more than five percent of the overall conservation budget.

Response: The rule requires that information provided as part of the

annual certification be verifiable, including information on funds contributed to African elephant conservation. This will ensure we have the data needed to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. Should we require any additional clarification to complete review of an application, we may request additional information from the range country. Additionally, we do not see a benefit of limiting the conservation value received through trophy hunting.

(42) *Comment:* A commenter recommended that the Service clarify what certifications it will require from the range countries and list the factors it will use to independently determine whether the specific import of an elephant trophy will enhance the survival of the species. The commenter recommended that the Service make the findings and its sources of information used to make the decision available to the public.

Response: We recognize there may be some variability in how range countries deliver the requested information and that the information may come in different forms from different range countries. To ensure that we are not being overly burdensome on range countries while still receiving the appropriate information to make an informed conservation decision, in this final rule we are not overly prescriptive about the form of documentation provided. As previously noted, the burden to provide sufficient information to approve a permit application remains on the applicant, as with all ESA permits. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import will not meet the criteria for an enhancement finding and, consistent with both the previous regulations and these final regulations, cannot and will not be authorized for import into the United States. However, certain necessary information may be available only from the range country. This final rule seeks to streamline and improve transparency around the permitting process and will better ensure that the Service is provided necessary information when making decisions on applications. The rule does not require publication of receipt of applications or permit decisions, consistent with other applications received for an ESA permit

for a threatened species under 50 CFR 17.32(a).

(43) *Comment:* A commenter questioned what evidence the Service would require as proof that the trophies have been legally taken from a specific population.

Response: We recognize that what may qualify as evidence that a trophy was legally taken is likely to vary across range countries. We will consider all documentation provided by the range country and applicant, which may include but is not limited to, laws, regulations, and corresponding required documentation such as an issued permit.

(44) *Comment:* A commenter questioned the requirement that 100 percent of African elephant meat be used by local communities, believing that this requirement is too stringent and would require the range countries to create an expensive information-collection system at local levels.

Response: We recognize there are situations where hunting occurs and there are no nearby inhabitants or other circumstances where it would be inappropriate to include this requirement. We also recognize that this form of support to local communities, if applicable, may also be addressed as a method used to prevent or mitigate human–elephant conflict under paragraph (e)(6)(ii)(G)(7). Accordingly, we have removed proposed paragraph (e)(6)(ii)(G)(8) that required elephant meat be distributed to local communities from the final regulations.

(45) *Comment:* Several commenters opined that the proposed regulations are the first step in banning sport hunting and will hurt African elephant conservation efforts by imposing unnecessary, counterproductive, and overly burdensome sport-hunting requirements that will decrease conservation funding to range countries. The commenters provided examples where they believe African elephants are overpopulated and have a negative impact on biodiversity and climate change. The commenters stated that hunting has a negligible impact on African elephant populations and the Service is trying to impose unnecessary regulations.

Response: We did not propose to ban sport-hunted trophies of African elephants, and this final rule does not impose such a ban. We recognize that what may qualify as enhancement is likely to vary due to regional, national, and local ecological realities. We do not require that each criterion be updated annually, if doing so is not appropriate or feasible. If there are no or minimal changes from one year to the next, the

certification from the range country to the Service can reflect this situation. Rather, under this rule, we require a verifiable certification that the criteria have been met. If our evaluation determines that the requirements are no longer being met, we will work with the range country to communicate and address any concerns. All findings will continue to be considered on an application-by-application basis and take into account the conservation realities of the hunt area and the individual hunter.

(46) *Comment:* A commenter stated that the proposed rule disregards the ESA section 9(c)(2) exemption.

Response: We disagree. As explained in the proposed rule, and above in the preamble to this rule, under section 9(c)(2) (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exception from threatened species permitting requirements for qualifying imports of some threatened species that are also listed under CITES Appendix II. The presumption of section 9(c)(2) and 50 CFR 17.8 is overcome through issuance of a section 4(d) rule requiring ESA authorization prior to import, which rebuts the presumptive legality of otherwise qualifying imports (see *Safari Club Int'l v. Zinke*, 878 F.3d 316, 328–29 (D.C. Cir. 2017)). As the D.C. Circuit held in *Safari Club*, “[s]ection 9(c)(2) in no way constrains the Service’s section 4(d) authority to condition the importation of threatened Appendix-II species on an affirmative enhancement finding. Under section 4(d) of the ESA, the Service ‘shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species’ and may ‘prohibit with respect to any threatened species any act prohibited . . . with respect to endangered species.’ 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* § 1538(a)(1)(A), it may do the same with respect to threatened species under section 4(d), *see id.* § 1533(d).” The D.C. Circuit went on to explain that “promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [4(d) rule for African elephants].”

(47) *Comment:* Multiple commenters requested that the Service eliminate or suspend the two-elephant-per-year limit in the current rule. They stated that the two-per-year limit adds to permitting

delay because the first two must be imported before the applicant can file another application. Specifically, they requested that the Service revise the African elephant section 4(d) rule to four elephants per calendar year to cover 2 successive years of double hunts. The commenters requested that the two-per-year rule be suspended until 2 or more years after the permitting backlog is addressed and recommended a Director’s Order to suspend the 2-per-year rule effective immediately.

Response: We have analyzed the information in the petition submitted by Conservation Force (summarized earlier in this preamble) and the public comments received as part of this rulemaking. We conclude that the limit of the provision regarding two African elephant trophies import permits per calendar year, which originally published in the 2016 revision to the African elephant section 4(d) rule, remains appropriate. We do acknowledge some of the petitioner’s points regarding delay in the permitting process but conclude that the original reasoning for the regulation remains intact and is unrelated to delay in permit processing. In response to a D.C. Circuit Court opinion, *Safari Club Int'l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe and now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service’s withdrawal of the countrywide findings and implementation of the application-by-application approach in *Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020). We do recognize that the application-by-application process involves additional information requirements, time, and staff resources to complete the review of each application. Other factors have also led to delays in permit processing in recent years, including but not limited to the Covid–19 pandemic.

With regard to the annual import limit, we limited the number of sport-hunted African elephant trophies that may be imported into the United States to address a small number of circumstances in which U.S. hunters have participated in elephant culling operations and imported, as sport-hunted trophies, a large number of elephant tusks from animals taken as part of the cull. This practice has

resulted, in some past cases, in the import of commercial quantities of ivory as sport-hunted trophies. Sport hunting is meant to be a personal, noncommercial activity, and engaging in hunting that results in acquiring quantities of ivory that exceed what would reasonably be expected for personal use and enjoyment is inconsistent with sport hunting as a noncommercial activity.

In evaluating an appropriate limit for personal use, we considered actions taken by the CITES Parties in recognition of the need to ensure that imports of certain other hunting trophies are for personal use only. In three different resolutions, the CITES Parties have agreed to limit annual imports of hunting trophies of leopards (no more than two), markhor (no more than one), and black rhinoceros (no more than one). All three of the resolutions containing these annual import limits (Resolution Conf. 10.14 (Rev. CoP19) on *Quotas for trade in leopard hunting trophies and skins for personal use*, Resolution Conf. 10.15 (Rev. CoP14) on *Establishment of quotas for markhor hunting trophies*, and Resolution Conf. 13.5 (Rev. CoP18) on *Establishment of export quotas for black rhinoceros hunting trophies*) recommend, among other things that the Management Authority of the country of import be satisfied that the trophies are not to be used for primarily commercial purposes if they are being imported as personal items that will not be sold in the country of import and the owner imports no more than one or two (depending on the species) trophies in any calendar year.

Based on past practice under CITES and the number of elephant trophies imported each year by the vast majority of U.S. hunters who engage in elephant hunts, two trophies per hunter per year is an appropriate upper limit for the personal use of the hunter, and we conclude that this limit continues to reasonably address our concern. We do not have information to indicate that allowing the import of two trophies per hunter per year would result in import of commercial quantities of ivory or would not be appropriate for personal use and therefore have also not proposed to further reduce the annual import limit.

(48) *Comment:* A commenter stated that, with paragraph (e)(10)(ii), the Service would allow non-detriment findings made by elephant-exporting countries to subsume its own enhancement findings. The commenter believed this provision will serve to expand the capture and trade of live elephants.

Response: We intend the amendments in this rule to the current section 4(d) regulations to continue to encourage African countries and people living with elephants to enhance their survival and provide incentives to take meaningful actions to conserve the species and put much-needed revenue back into elephant conservation. The amendments also ensure that we do not allow imports in circumstances where elephants are not well-managed and better ensure that any live elephants in trade and their offspring are well taken care of throughout their lifetimes. Our enhancement finding, our non-detriment finding (where applicable for Appendix-I elephants), and the exporting country's non-detriment finding are each separate determinations and are not conflated.

(49) *Comment:* Multiple commenters requested clarity regarding the timing and locations of determinations of captive-elephant pregnancy status. One commenter believed the annual certification requirement that regulating authorities can ensure that no live African elephants to be imported are pregnant (which the commenter refers to as "the pregnancy certification") is a violation of CITES transport guidelines (based on the International Air Transport Association's Live Animal Regulations (IATA LAR)), which advise against the transport of pregnant mammals "for whom 90% or more of the expected gestation period has already passed." The commenter suggested that the Service require a permit to include a condition that pre-transport health checks be conducted, including testing for hormonal indicators of pregnancy, to ensure pregnant females will not be captured or imported. The commenter believed the proposed pregnancy certification conflicts with the family unit certification, which requires that family units are kept intact, and that, under the pregnancy certification, pregnant females must be left behind.

Response: We disagree with the commenter's statement that the annual certification is a violation of CITES transport guidelines. The section 4(d) rule states that, for an importation to qualify for an enhancement finding, regulating authorities of the exporting country must be able to ensure that no live African elephants to be imported are pregnant. In accordance with CITES, and under 50 CFR part 23, each import, export, or re-export of live CITES animals, including all African elephants, must comply with the IATA LAR or, in the case of non-air transport of animal species that may require transport conditions in addition to or

different from the LAR, the CITES *Guidelines for the non-air transport of wild animals and plants*. Therefore, the importation of pregnant African elephants is currently a violation, and additional certification will not be necessary.

(50) *Comment:* A commenter stated that the "valuable resource" certification is not meaningful to the Service's enhancement finding and recommended replacing it with language that actually captures the purpose and spirit of the ESA.

Response: We conclude that the term "valuable resource" is appropriate and consistent with the conservation purposes of both the ESA and CITES and that further clarification is not necessary. We have carefully considered the annual certification criteria, including the "valuable resource" criterion. Different countries and regulating agencies may value species in different ways. For example, the ESA (Section 2(a)) recognizes that fish, wildlife, and plant species are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. Other nations' laws may recognize the economic value or other value of a species as an incentive to pursue their conservation. The essential purpose of the criterion is to ensure the regulating authority in fact recognizes the African elephant as valuable, has an incentive to contribute to their conservation, and further that they have the legal and practical capacity to manage African elephant populations for their conservation. The standards we published in the proposed rule provide us with the data to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. In this rule, we are clarifying the enhancement criteria and will review all information submitted by the range country. Should any additional clarification be required to complete the review of an application, we may request additional information from the range country.

(51) *Comment:* A commenter stated that while paragraph (e)(10)(ii)(F) of the proposed rule calls for keeping family units intact, the "maximum extent practicable" caveat provides a major loophole that will be exploited to exclude elephants who are difficult to handle or to separate young elephants from older family members during capture. The commenter recommended that the Service impose an additional requirement that range countries must

certify that any live elephant sought to be imported has not been orphaned as a result of legal trophy hunting.

Response: The inclusion of “maximum extent practicable” provides us with flexibility to ensure that activities that provide enhancement for the survival of the species are not unreasonably prohibited, while ensuring that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable. We conclude that the additional certification recommended by the commenter is unnecessary.

(52) *Comment:* A commenter stated that the proposed rule exceeds the authority of the Service under the ESA. The commenter stated that the proposed regulations at 50 CFR 17.40(e)(10) would impose animal-welfare requirements that are not related to the ESA and would create burdensome and duplicative regulatory requirements that could result in conflicts with the provisions of the AWA. The commenter stated that the ESA does not regulate possession of endangered species, nor the welfare of those possessed, and regulates only movement of those species. The commenter stated that all matters that fall under the AWA are the responsibly of the Secretary of Agriculture, who is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by zoos and other exhibitors. Lastly, the commenter stated there is no statutory authority for the Service to seek to permanently control the movement of elephants or other species that have been legally imported.

Response: The final rule’s amendment of 50 CFR 17.40(e)(2) and addition of new 50 CFR 17.40(e)(10) removes the current permitting exception for otherwise prohibited activities with live elephants, including import into or export from the United States; sale or offer for sale in interstate or foreign commerce; and delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of a commercial activity. This final rule also establishes the standards used to evaluate “enhancement” under the ESA for the import of wild-sourced live African elephants, while utilizing the criteria in § 17.32(a) for enhancement findings for other imports and exports of live elephants. Under 50 CFR 17.40(e)(10), “suitably equipped to house and care for” findings are also required for permits to authorize activities with live elephants. Those findings for live specimens are made in

accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65, which are currently applied during import of a live African elephant and other Appendix–I species, and those findings do not conflict with activities covered under the AWA. USDA does not make the determination regarding whether a facility is suitably equipped to house and care for any specimen, nor does the responsibility of making that determination fall under the AWA. We found that this incremental increase in requirements for activities with live African elephants under the section 4(d) rule is well-tailored to the conservation needs of the species in light of current CITES guidance and recommendations and consistent with our authority under the ESA.

(53) *Comment:* A commenter stated the rule is inconsistent with CITES and Resolution Conf. 5.10, which the commenter stated clarifies that CITES prohibits the importation of Appendix–I species from the wild unless the importer demonstrates that (1) the importer has been unable to obtain suitable captive-bred specimens of the same species; (2) the importer could not use another species, not listed in Appendix I, for the proposed purpose; and (3) “the proposed purpose could not be achieved through alternative means.” The commenter stated the current regulations do not require an applicant to demonstrate that it has exhausted alternatives before importing an African elephant.

Response: We disagree with the assertions made by the commenter. All CITES requirements remain in effect and are not affected by this rule. Our CITES implementing regulations are found in 50 CFR part 23. A finding of “not for primarily commercial purposes” will continue to be required for Appendix–I imports in accordance with 50 CFR 23.62. In addition, this rule provides clear requirements for consideration of relevant alternatives prior to the import of wild-sourced African elephants.

(54) *Comment:* A commenter stated the proposed regulations allow unwarranted deference to claims that the exhibition of animals promotes conservation through education. The commenter recommended that the Service require zoos to submit evidence that the exhibits result in measurable gain in the understanding of the animal and the threats it faces and contribute to actions aimed at conserving the species.

Response: Under 50 CFR 17.32(a), we require a robust review of ESA import permit applications for the purposes of

zoological exhibition and educational purposes, including an analysis of educational materials and programming to determine if the proposed import meets the issuance criteria under 50 CFR 17.32(a)(2).

(55) *Comment:* Several commenters suggested the regulatory revisions in the proposed rule are not sufficient in reducing the harm that African elephants suffer as a result of their continued importation and exportation throughout the global market. They opined that legal hunting is not a sufficient way to increase the survival of the species. Because of the practices of wildlife traffickers and forged import documents, the commenters did not believe it is feasible for the Service to ensure that elephants are legally sourced. Due to these factors, they requested a complete ban on sport-hunted trophies and the importation of live African elephants.

Response: See response to Comment 13.

(56) *Comment:* Several commenters expressed concern that the standards in the proposed rule regarding the annual certification of range countries will be overly burdensome and impossible to achieve and are vague and unreasonable. They are also concerned that the Service does not have the capability to collect, compile, and file the information, leading to less conservation funding for the range countries.

Response: See responses to Comments 35 and 45.

(57) *Comment:* Several commenters expressed concern over the negative potential impacts of the proposed rule on hunting revenue and therefore on elephant conservation. Regulatory barriers would lead to a prohibition on trophy hunting or otherwise make it impossible for range countries to comply, disincentivizing elephant hunting and ultimately generating less revenue from hunting. Hunting revenue is crucial to the operating budgets of wildlife authorities in range countries. The proportion of illegally killed elephants is higher in parts of Africa where hunting is not a part of the conservation regime, which is linked to the money generated by hunting that is put back into anti-poaching efforts. Regulatory barriers to hunting will therefore reduce their benefits to conservation, such as habitat protection, anti-poaching, and community support.

Response: As previously noted, well-managed trophy hunting can benefit conservation by generating funds to be used for conservation, including for habitat protection, population monitoring, wildlife management

programs, and law enforcement efforts. We are also aware that not all trophy hunting is part of a well-managed, well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all legal requirements under 50 CFR 17.32(a)(2) are met before allowing import. One purpose of this rule is to clarify the criteria used when making these evaluations and to streamline the gathering of necessary information to improve review efficiency.

(58) Comment: A commenter stated that requiring hunting revenues add to, and not simply substitute for, other existing funding for conservation is confusing and contradictory, considering that some areas are funded exclusively by hunting revenue.

Response: As previously noted, well-managed trophy hunting can benefit conservation by generating funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, and law enforcement efforts. The example provided, of conservation of land that is utilized for hunting that can be viably protected only via hunting, is an example of hunting revenues adding to and not simply substituting for other existing funding for conservation.

(59) Comment: Several commenters expressed concern about the way funds are to be measured and monitored under the proposed rule. One commenter stated that the current requirement to provide information on how funds derived from hunting license or trophy fees will be used is imprecise and infringes on individual privacy. Another commenter noted that contributions to conservation are not typically species-specific and asked how “African elephant conservation activities,” to which funds derived from hunting are to be applied, are defined in the rule. The commenters stated that license fees in Africa are not well-managed and suggest that we instead consider that the following information: (1) If the community’s wildlife is being sold for a fair market price; (2) if this money is reaching the community; and (3) when this money reaches the community, if it is governed transparently, democratically, and effectively. They suggested that systems that monitor the performance of the private sector in a standardized way would benefit communities.

Response: This rule clarifies the enhancement criteria, including reporting on the revenues generated from the activities, and supports the evaluation of whether the proposed activity will contribute positively

toward the recovery of the species in the wild. The import of each specimen must meet this standard. Accordingly, before approving the import, we use the enhancement-criteria information, including the information on funds, to ensure that standards are met. We acknowledge that wildlife management systems vary among African elephant range countries and, as a result, the way in which funds may be used to support elephant conservation may differ. We are not advocating for a specific system. This rule instead clarifies that we consider this information when making a determination related to enhancement.

(60) Comment: Several commenters emphasized the importance of hunting revenues going back to community members to decide how to use. One commenter provided an example of a system at the community level to evaluate the “fair price for wildlife” that relied on voluntary access to community income statements and annual quotas. They stated that the long-term political and economic sustainability of African wildlife directly relates to community-based natural resources management governance principles and ensuring that high-performing communities get access to better prices or that a smoother importation process might help incentivize this process. They stated that the data requirements listed in the proposed rule reflect the needs of the private sector, but not the community. They suggested measuring revenue using a system that includes multiple elements: financial, total economic value, capital investment, ecological health and productivity, utilization and sustainability, resource protection, community development, problem-animal reporting and management, and impact monitoring. Other commenters suggested that funds be primarily used for elephant conservation on private land and within community conservancies, as is the case in Tanzania, and that the Service should clarify that revenue to communities and general treasuries of governments can constitute enhancement.

Response: Please see the response to the previous comment (Comment 59).

(61) Comment: A commenter stated that combining transparency with an educated marketplace would help American hunters spend their money where hunting revenues genuinely benefit and empower communities. The commenter suggested that the following data be collected: how much is paid for the quota relative to its size/value; how much is paid to individuals/shareholders in the community; whether all individuals participate in

revenue allocation processes; how individuals allocate money back to public-good functions (*i.e.*, what do they pay in taxes and how are these taxes used); and how well these finances are accounted for and managed.

Response: If available, we will consider this information when conducting an enhancement evaluation. See also response to Comment 59.

(62) Comment: A commenter suggested that the Service require range countries to provide a detailed accounting of how all derived funds are used along with an explanation of how these funds produce a net positive impact on the species’ conservation. The commenter suggested that the Service require transparent reporting of funds and evidence that those funds make biologically significant advances to elephant conservation and stated that it is important for funds to be put toward infrastructure and educational programs that promote human-elephant coexistence.

Response: If available, we will consider this information when conducting an enhancement evaluation. See also response to Comment 59.

Changes From the Proposed Rule to the Final Rule

All changes from the proposed rule (87 FR 68975, November 17, 2022) to this final rule were discussed above in our responses to comments received. We have considered substantive comments and data provided. In summary, we have made a few important changes and clarifications in the final rule:

- We finalized the CITES National Legislation Project Category One requirement to take effect after CITES CoP20 (anticipated to be held in 2025). We made this change to give range countries additional time to comply with this requirement and to ensure the requirement is supportive of countries making efforts to comply.
- We have added language to proposed paragraph (e)(11) to clarify that the CITES National Legislation Project Category One requirement will allow for limited exceptions for import of African elephant parts and products other than ivory for law enforcement purposes and genuine scientific purposes. These narrow exceptions parallel and will follow the same requirements as the exceptions for law enforcement purposes and for genuine scientific purposes currently established for the import of African elephant ivory (50 CFR 17.40(e)(7) and (e)(8)).
- We have revised the language in proposed paragraph (e)(10)(iv) to clarify that each special permit to transfer an

elephant must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person *or location* without a special purpose permit. Adding the requirement that the permittee be authorized by permit to obtain a new permit when the animal is transferred to another location (*e.g.*, to a facility located on different premises, or pursuant to a temporary loan or lease) adds clarity to the permit's condition.

- We have revised the language in new paragraph (e)(6)(ii) to clarify that any new requirements for imports of sport-hunted trophies will be applied prospectively and not impact sport-hunted trophy applications where the hunt occurred before the effective date of this rule. We have amended the final rule accordingly, so the new regulations at 50 CFR 17.40(e)(6)(ii) pertaining to import of sport-hunted trophies will apply where the hunt date is on, or after, the effective date of this rule.

- We have revised the enhancement criterion that requires African elephant populations in a range country to be stable or increasing for import of live African elephants and sport-hunted trophies. We have replaced the term “stable or increasing” with “biologically sustainable.” The term “biologically sustainable” gives us flexibility when making our enhancement determinations and allows us to consider circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing. This change has been reflected in paragraphs (e)(6)(ii)(A) and (e)(10)(ii)(A) of this final rule.

- We have adjusted the enhancement criterion that outlines how funds derived from live elephant and sport-hunted trophy imports should be applied toward African elephant conservation. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild. We have replaced the word “primarily” with “significantly” as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild. We have amended proposed paragraphs

(e)(6)(ii)(G) and (e)(10)(ii)(H) to reflect this change.

- We have removed the enhancement criterion that requires 100 percent of African elephant meat from a hunt to be donated to local communities. We recognize there are situations where there are no inhabitants near a hunt site, or other circumstances that would make the requirement infeasible. We also recognize that this form of support to local communities, if applicable, may also be addressed as a method used to prevent or mitigate human-elephant conflict under paragraph (e)(6)(ii)(G)(7). Accordingly, we have removed proposed paragraph (e)(6)(ii)(G)(8) from this final rule.

- We have revised the language in new paragraphs (e)(6)(ii) and (e)(10)(ii) to clarify that a range country must provide the Service with a properly documented and verifiable certification dated no earlier than 1 year prior to the date the elephant is taken or removed from the wild, as opposed to when the permit is processed. We have made this clarification to better ensure the information provided by a range country is relevant to the time-period that the activity takes place. This will help ensure that we are using relevant data to determine if enhancement has been met for the species in the wild.

Regulatory Changes

The rule portion of this document sets forth the new regulatory provisions that have been added to 50 CFR 17.40(e). For reasons explained below, the rule text also includes some previous regulatory text that we did not change. Public comments were accepted only on the proposed new regulatory text in the proposed rule and on paragraph (e)(2) as described in the draft environmental assessment (see the National Environmental Policy Act section below in the preamble) and not on any other regulatory provisions in paragraph (e).

In paragraph (e)(1), which sets forth definitions used in the regulations in paragraph (e), we added a definition for “range country.” We also reformatted the paragraph so that it follows current style requirements for the Code of Federal Regulations. Thus, we divided the current single paragraph into an indented list, and we have set forth the new term and definition in alphabetic order in a list of the current terms and definitions. However, we did not make changes to the current terms and definitions in that paragraph.

In paragraph (e)(2), we removed both references, which appear in the paragraph heading and the first sentence, to live African elephants because we included regulatory

provisions regarding live African elephants in a new paragraph (e)(10) as described below.

The primary new regulatory provisions in this final rule, as described earlier in this document, are as follows: In a new paragraph (e)(6)(ii), we added regulations pertaining to making enhancement determinations that are required by the previous section 4(d) rule for the importation of African elephant sport-hunted trophies. In a new paragraph (e)(10), we added regulatory provisions regarding activities with live African elephants. Finally, we incorporated the CITES National Legislation Project designations into the requirements for certain imports in a new paragraph (e)(11) and, consequently, we added cross-references to paragraph (e)(11) in paragraphs (e)(2), (e)(6)(i)(D), and (e)(10)(i).

Required Determinations

Regulatory Planning and Review: Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant. The Service has assessed the expected direction of change in benefits, costs, and transfers from this rulemaking and has evaluated alternatives in the environmental assessment and economic analysis (see **ADDRESSES**).

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

The Service has finalized an environmental assessment, as part of our review under the National Environmental Policy Act (NEPA), which is available for the public (see the section below in the preamble pertaining to NEPA). The final rule revises the current section 4(d) rule that

regulates trade of African elephants (*Loxodonta africana*). This final rule revises the regulations at 50 CFR 17.40(e) more strictly to control U.S. trade in live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. This final rule does not affect the regulations for African elephant ivory.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations,

and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an

established size standard for industries described in the North American Industry Classification System (NAICS). To assess the effects of the final rule on small entities, we focus on entities (zoos and traveling exhibits) that are equipped to care for and feed a captive-held elephant, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies, and entities that provide guide services for trophy hunting. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. As shown in table 1, most businesses within these industries are small entities (U.S. Census). The following analysis is supported by the economic analysis in the environmental assessment.

TABLE 1—POTENTIAL INDUSTRIES AFFECTED BY THE FINAL RULE TO REVISE THE REGULATIONS UNDER SECTION 4(d) OF THE ESA FOR AFRICAN ELEPHANTS

Industry	NAICS code	Size standards in millions of dollars	Number of businesses	Number of small businesses
Zoos and botanical gardens	712130	\$30.0	646	531
Traveling exhibits	712110	30.0	5,140	4,621
Furniture stores	442110	22.0	23,628	20,945
Luggage and leather goods stores	448320	30.0	988	615
Gift, novelty, and souvenir stores	453220	8.0	21,687	16,398
Used merchandise stores	453310	8.0	20,301	15,407
All other amusement and recreation industries (includes hunting guide services)	713390	8.0	18,405	7,629

Under the final rule, entities (zoos and traveling exhibits) will potentially be impacted if they import/export a live African elephant or transfer/move an African elephant after import. The environmental assessment and economic analysis show that total industry imports could decrease by, at most, one shipment annually if the importer does not choose to substitute a Category One designated country.

Under the final rule, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies will potentially be impacted if they import their products from a non-Category One country and do not choose to substitute a Category One country. The number of businesses importing parts and products other than ivory and sport-hunted trophies is unknown. However, we know that shipments from non-Category One countries averaged 60 shipments annually from 2010 to 2019. Assuming that each shipment represents one small business, the rule will affect 0.1 percent

of these small businesses (including furniture, luggage and leather goods, gifts, and used merchandise stores). Due to the highly specific segments of consumers who want these types of products, we expect a small number of small businesses to be impacted under the final rule.

Under the final rule, U.S. entities that provide guide services for hunting African elephants will potentially be impacted if they provide these services in a non-Category One designated country and do not choose to or cannot provide those services in a Category One designated country. The number of U.S. businesses providing guide services for hunting African elephants is unknown. Due to the niche market for this service, we expect few small businesses to be impacted under the final rule.

In addition to determining whether a substantial number of small entities are likely to be affected by this final rule, we must also determine whether the final rule is anticipated to have a significant economic effect on those small entities. As noted in the

environmental assessment and economic analysis, for businesses importing/exporting live African elephants (zoos and travelling exhibits), the incremental changes of submitting an additional form (with a \$100 permit application processing fee) or a decrease of at most one shipment out of total industry imports is expected to be negligible. Therefore, the final rule will not have a significant economic effect on zoos and traveling exhibits. For all industries, it is possible that some importers will substitute a Category One designated country, and the impacts of the final rule will be reduced.

Therefore, we certify that this final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Congressional Review Act: This final rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This rule:

a. Will not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This final rule will not significantly or uniquely affect small governments. A small government agency plan is not required. The final rule imposes no unfunded mandates. Therefore, this final rule will have no effect on small governments' responsibilities.

b. This final rule will not produce a Federal requirement of \$100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this final rule does not have significant takings implications. While certain activities that were previously unregulated will now be regulated, possession will remain unregulated, except with regard to illegally taken or illegally traded specimens. A takings implication assessment is not required.

Federalism: The revisions to part 17 do not contain significant federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: This final rule contains new information collections requiring approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We will request OMB approval of the new reporting and recordkeeping requirements identified below:

(1) *Permit Application (Form 3–200–37h)*, "Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA)" 50 CFR 17.40—Form 3–200–37h will cover activities involving the interstate commerce, transfer, export, or foreign commerce of live African elephants. The

application form applies to both wild-sourced and captive-bred live African elephants. The information provided in the application form will be used to determine whether a permit can be issued to the applicant under the relevant Federal regulations pertaining to the requested activity.

We will develop this application form in the Service's ePermits system to reduce public burden. Upon request, we will provide the public with paper-based (or PDF) versions if they do not have reliable access to the internet.

Information to be collected from domestic entities (*i.e.*, individuals, private sector, State/local/Tribal governments) is listed below, noting applicants may need to provide information from the foreign entity as part of their application submission:

- Standardized identifier information required in 50 CFR 13.12.
- Name and address where the permit is to be mailed, if different from physical address.
- Name, phone number, and email of individual(s) for the Service to contact with questions.

- Whether the applicant or any of the owners of the business (if applying as a business, corporation, or institution) have been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed; been convicted, or entered a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act; forfeited collateral; or are currently under charges for any violation of the laws.

- Type of activity requested (interstate commerce, transfer, export, or foreign commerce).

- The current location of the animal(s) (if different from the physical address).

- Name and physical address of the recipient of the specimen.

- For each animal involved in the export/transport, the applicant must provide the following information:

- Scientific name (genus, species, and if applicable, subspecies);

- Common name;

- Approximate birth date (mm/dd/yyyy);

- Wild or captive-bred;

- Quantity;

- Sex (males, females, *e.g.*, 10, 2); and

- Permanent markings or identification (microchip #, leg band #, tattoos, studbook #, etc.).

- Information regarding source of specimen(s).

- A description and justification for the requested activity.

- Information regarding technical expertise and facilities.

- Information confirming that the receiving facility meets the CITES "suitably equipped to house and care for" requirements.

- The transportation/shipment condition of the live animals.

Modifications to Form 3–200–37h: The organization of the application was updated to clarify the information required from the applicant. To ensure that applicants are asked to respond only to questions which pertain to the specific activity they are requesting, the application was divided into multiple "Parts". This reorganization will clarify which questions are required and reduce the overall burden to the applicant. Similarly, guidance text was altered in an attempt to clarify the activities covered under the application and the requirements for submission. Several questions were also combined or removed in order to reduce redundancy and to decrease the overall burden on the applicant. We believe these edits will make the form clearer and greatly reduce the burden for all applicants that will be filling out the form.

(2) *Range Country Certification Requirements*—As described above, the final rule establishes an annual certification requirement for range countries to provide the Service with information about the management and status of African elephants and their habitat, within their country. This is not part of the application form itself, but a separate certification document/report/letter from the foreign country's government. The foreign government may provide the certification and information directly to the Service, or the applicant may provide it to the Service. The certification and information will be subject to verification by the Service.

This annual certification from the range country will be kept on file and made available to the public. Without this properly documented and verifiable annual certification, the Service would be unable to issue the requested import permit. This annual certification is specifically for requests to import live, wild-sourced African elephants or African elephant sport-hunted trophies.

Information to be collected from the range country for the import of live, wild-sourced elephants includes specific information on whether family units were kept intact and whether any of the animals collected are pregnant. Alternatively, information collected for the import of sport-hunted trophies includes specific information on the use of the meat of the animal.

(3) *Recordkeeping Requirements*—Completion of the new application form requires the retention of records regarding details on the identification of the elephants, as well as regarding their acquisition, original source, and subsequent transfers, as well as records documenting staff technical expertise and facility information for the species.

(4) *Permit Fee*—The new Form 3–200–37h will impose a new nonhour burden cost of \$100 per application. Amendments will incur a \$50 processing fee.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant’s address, telephone numbers, tax identification number, email address, and website address, if applicable. Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications.

The information that we collect on applications and reports is the

minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Respondents submit application forms periodically as needed; submission of reports is generally on an annual basis, or as identified conditionally as part of an issued permit. We examined applications in this collection, focusing on questions frequently misinterpreted or not addressed by applicants. We have made clarifications to many of our applications to make it easier for the applicant to know what information we need and to accommodate future electronic permitting. Use of these forms:

- Reduces burden on applicants.
- Improves customer service.
- Allows us to process applications and finalize reviews quickly.

A copy of the Form 3–200–37h, “*Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA)*” is available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Requirements for African Elephants.

OMB Control Number: 1018–0186.

Form Numbers: FWS Form 3–200–37h.

Type of Review: New.

Respondents/Affected Public: Individuals (including hunters); private sector (including biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, antique dealers, exotic pet industry, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers); State, local, Tribal, and Federal governments; and foreign governments.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion or annually, depending on activity.

Total Estimated Annual Nonhour Burden Cost: \$2,800 for costs associated with application processing fees, which range from \$0 to \$250. State, local, Tribal, and Federal government agencies and those acting on their behalf are exempt from processing fees.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Application—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	6	6
Private Sector	10	1	10	6	60
Government	5	1	5	6	30
ePermits Application—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	5.25	5
Private Sector	10	1	10	5.25	53
Government	5	1	5	5.25	26
Amendment—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	4	4
Private Sector	5	1	5	4	20
Government	3	1	3	4	12
ePermits Amendment—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	3.5	4
Private Sector	5	1	5	3.5	18
Government	3	1	3	3.5	11
Range Country Certification Requirements 50 CFR 17.40(e) NEW					
Foreign Government	37	1	37	10	370
Totals	87	87	619

* Rounded.

On November 17, 2022, we published in the **Federal Register** (87 FR 68975) a proposed rule (RIN 1018–BG66), which announced our intention to request OMB approval of the information collections identified in the rule. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on January 17, 2023. Summaries of comments addressing the information collections contained in this rule, as well as the agency response to those comments, can be found in the “Proposed Rule, Public Hearing, and Public Comments Received” section of this rule, as well as in the information collection request submitted to OMB on the *RegInfo.gov* website (<https://www.reginfo.gov/public/>).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018–0186 in the subject line of your comments.

National Environmental Policy Act (NEPA): This final rule was analyzed under the criteria of the National Environmental Policy Act, the

Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because we conducted an environmental assessment and reached a finding of no significant impact. This finding and the accompanying environmental assessment are available online at <https://www.regulations.gov> at Docket Number FWS–HQ–IA–2021–0099.

Government-to-Government Relationship with Tribes: The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this final rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department’s Tribal consultation policy is not required. Individual Tribal members must meet the same regulatory requirements as other individuals who trade in African elephants, including African elephant parts and products.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, or use. This final rule will revise the current regulations in 50 CFR part 17 regarding trade in African elephants and African elephant parts and products. This final rule will not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.40(e) by:

■ a. In the introductory text, removing the reference “paragraphs (e)(2) through (9)” and adding in its place the reference “paragraphs (e)(2) through (11)”;

■ b. Revising paragraphs (e)(1), (e)(2), and (e)(6)(i)(D);

■ c. Redesignating paragraphs (e)(6)(ii) and (iii) as paragraphs (e)(6)(iii) and (iv) and adding a new paragraph (e)(6)(ii); and

■ d. Adding paragraphs (e)(10) and (e)(11).

The revisions and additions read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) * * *

(1) *Definitions*. In this paragraph (e), the following terms have these meanings:

Antique means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)).

Ivory means any African elephant tusk and any piece of an African elephant tusk.

Range country means a country that exercises jurisdiction over part of the natural geographic range of the African elephant including the following: Angola; Benin; Botswana; Burkina Faso; Cameroon; Central African Republic; Chad; Congo, Republic of the; Congo, The Democratic Republic of the; Côte d’Ivoire; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Malawi; Mali; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Sierra Leone; Somalia; South Africa; South Sudan; Tanzania, United Republic of; Togo; Uganda; Zambia; and Zimbabwe.

Raw ivory means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

Worked ivory means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Parts and products other than ivory and sport-hunted trophies*. African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in

interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

* * * * *

(6) * * *

(i) * * *

(D) The requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met; and

* * * * *

(ii) For African elephant sport-hunted trophies taken on or after May 1, 2024, to make an enhancement determination under paragraph (e)(6)(i)(B) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is taken that:

(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain sport hunting at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations.

(G) Funds derived from the involved sport hunting are applied significantly toward African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range country governments to produce or strengthen regional and national elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor elephant populations;

(5) Conducting elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict.

* * * * *

(10) *Live African elephants.* (i) Live African elephants may be imported into the United States, provided the Service determines that the activity will enhance the survival of the species, the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), the animal is accompanied by a threatened species permit issued under § 17.32, and the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

(ii) To make an enhancement determination for the import of wild-sourced live African elephants under paragraph (e)(10)(i) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is removed from the wild that:

(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable.

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant.

(H) Funds derived from the import are applied significantly toward African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of African elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range country governments to produce or strengthen regional and national African elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor African elephant populations;

(5) Conducting African elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict.

(I) The government of the range country first considers any live elephants that it approves for export for both in situ conservation programs and for transportation to other locations to augment extant wild populations or reintroduce elephants to extirpated ranges.

(iii) Live African elephants may be sold or offered for sale in interstate commerce, and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity, provided the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), and a special purpose permit is issued under § 17.32 or a captive-bred wildlife registration is issued under § 17.21(g).

(iv) Each permit issued to authorize activity with a live African elephant under 50 CFR parts 17 or 23 must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person or location without a special purpose permit issued under § 17.32. Each special purpose permit for a live African elephant must also include the same condition. Each special purpose permit issued for a live African elephant will require a finding by the Service that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter).

(11) *CITES National Legislation Project and African elephants.* On or

after January 1, 2026, live African elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies may not be imported into the United States under the exceptions for importation provided in § 17.32 or paragraphs (e)(2), (e)(6), or (e)(10) of this section except when:

(i) All trade in the specimen has been and is accompanied by a valid CITES

document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (see § 23.7 of this chapter and <http://www.cites.org>); or

(ii) When importation under paragraph (e)(2) of this section is for law enforcement purposes and meets the requirements as set forth at paragraph

(e)(7) of this section for the import of ivory or is for genuine scientific purposes and meets the requirements as set forth at paragraph (e)(8) of this section for the import of ivory.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024-06417 Filed 3-29-24; 8:45 am]

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