

# Revisions to the Endangered Species Act (ESA) Special Rule for the African Elephant

## Questions and Answers

**The U.S. Fish and Wildlife Service (Service) will publish a final rule revising the African elephant rule under section 4(d) of the ESA [50 CFR 17.40 (e)] on June 6, 2016. The guidance provided in this document will be effective July 6, 2016, 30 days following publication of the rule in the Federal Register. To view a PDF of the final rule, click [here](#).**

### **Why is the Service implementing a near-complete ban on elephant ivory trade?**

President Obama issued [Executive Order 13648](#) on July 1, 2013, committing the United States to step up its efforts to combat wildlife trafficking. As stated in this Order, wildlife trafficking reduces the economic, social and environmental benefits of wildlife while generating billions of dollars in illicit revenues each year, contributing to the illegal economy, fueling instability and undermining security. It is in the national interest of the United States to combat wildlife trafficking and ensure we are not contributing to the growing global demand for elephant ivory.

Given the unparalleled and escalating threats to African elephants, we believe a near-complete ban on commercial trade in elephant ivory is the best way to ensure U.S. domestic markets do not contribute to the decline of this species in the wild.

### **Why didn't the Service ban all ivory trade?**

In developing the 2015 proposed rule and this final rule, the Service has had extensive consultation with those engaged in the legal ivory trade including representatives of professional musicians, musical instrument manufacturers, antiques dealers and collectors, museum curators, and ivory craftsmen. We received over one million comments in response to the proposed rule, the considerable majority of which expressed overwhelming support for stricter regulation of the commercial ivory market to help protect African elephants. We believe this rule strikes an appropriate balance of allowing certain narrow exceptions for activities that do not contribute to elephant poaching and illegal trade in ivory while also achieving our primary goal of ensuring that the U.S. market is not contributing to the current poaching crisis.

In addition, there are certain activities that would be precluded by a complete ban that we believe would benefit the conservation of elephants or do not contribute to poaching and illegal trade. These activities include the movement of ivory for law enforcement and bona fide scientific purposes, and the noncommercial movement of certain items, such as museum specimens and musical instruments containing antique ivory or ivory removed from the wild prior to the listing of African elephants under the Convention on International Trade in Endangered Species (CITES). Prohibiting such activities would not benefit elephant conservation.

The ESA explicitly exempts [antiques](#) from ESA prohibitions and allows certain activities with the issuance of an [ESA permit](#). The antiques exemption applies to all ESA species, including

both African and Asian elephants.

**What is the U.S. role in illegal elephant ivory trade?**

The United States is among the world’s largest consumers of wildlife, both legal and illegal. With regard to black market wildlife trade, it is difficult to determine the exact U.S. market value or rank the U.S. role in comparison to other nations. However, we do know we are a significant consumer and trader of illegal ivory, and we must continue to be vigilant in combating illegal ivory trade. By effectively controlling illegal ivory trade at home and assisting elephant range states and consumer countries around the world, we can have a significant impact on elephant conservation.

Prior to this rule, our laws and regulations have focused on controlling import and export while allowing some ivory trade within the United States. In 1989, a moratorium on ivory imports was put in place through the African Elephant Conservation Act (AfECA).

Although there is legal domestic trade in antiques and other legally acquired ivory imported prior to the 1989 AfECA ivory import moratorium, we believe a substantial amount of elephant ivory continues to be illegally imported and enter the domestic market. Ivory sold in the United States typically includes worked items such as carvings and components of larger finished products such as knife handles, billiard cues and furniture. Ivory is sold in retail shops as well as through online sellers. It is extremely difficult to differentiate legally acquired ivory from ivory derived from elephant poaching. Our criminal investigations and anti-smuggling efforts have clearly shown legal ivory trade can serve as a cover for illegal trade. As just one example, Service and state officers seized more than \$2million-worth of illegal elephant ivory from two New York City retail stores in 2012. Therefore, we are further regulating import, export and interstate sale, enacting a near-total ban on elephant ivory trade in the United States.

**How do the changes to the African elephant 4(d) rule affect trade in African elephant ivory?**

*Please note this table is only for guidance on the revisions to the Endangered Species Act 4(d) rule for the African elephant. These provisions will go into effect 30 days after the final rule is published in the Federal Register in early June 2016.*

*This table does not include information on state laws. Check with your [state](#) to determine their requirements. Additionally, all imports and exports must be accompanied by appropriate CITES documents and meet other Service import/export requirements.*

	<b>What activities are currently allowed/prohibited under statute, regulation, or law enforcement discretion?</b>	<b>What will change when the final rule goes into effect?</b>
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	This column includes the Service’s revised Director’s Order No. 210 (effective May 15, 2014) and U.S. CITES implementing regulations 50 CFR part 23 (effective June 26, 2014).	This column describes the contents of the final rule in general terms. Please refer to the final rule text for details. These provisions will go into effect 30 days after the final rule is published in the <b>Federal Register</b> .
<b>Import</b>	<p><b><u>Commercial</u></b> What’s allowed:</p> <ul style="list-style-type: none"> <li>No commercial imports allowed.</li> </ul> <p><b><u>Noncommercial</u></b> What’s allowed:</p> <ul style="list-style-type: none"> <li>Sport-hunted trophies (no limit).</li> <li>Requires issuance of a threatened species permit under 50 CFR 17.32 for import of African elephant sport-hunted trophies from Appendix-I populations.</li> <li>Law enforcement and bona fide scientific specimens.</li> <li>Worked elephant ivory that was legally acquired and removed from the wild prior to February 26, 1976, and has not been sold since February 25, 2014, and is either: <ul style="list-style-type: none"> <li>Part of a household move or inheritance (see Director’s Order No. 210 for details);</li> <li>Part of a musical instrument (see Director’s Order No. 210 for details); or</li> <li>Part of a traveling exhibition (see Director’s Order No. 210 for details).</li> </ul> </li> </ul> <p><b>What’s prohibited:</b></p> <ul style="list-style-type: none"> <li>Worked ivory that does not meet the conditions described above.</li> <li>Raw ivory (except for sport-hunted trophies).</li> </ul>	<p><b><u>Commercial</u></b> The final rule does not include any changes for commercial imports.</p> <p><b><u>Noncommercial</u></b> The final rule includes the following changes for noncommercial imports:</p> <ul style="list-style-type: none"> <li>Limits import of sport-hunted trophies to two per hunter per year.</li> <li>Requires issuance of a threatened species permit under 50 CFR 17.32 for import of all African elephant sport-hunted trophies.</li> <li>Removes the requirement that worked elephant ivory has not been sold since February 25, 2014. All other requirements for worked elephant ivory (listed in the previous column) must be met.</li> </ul>
<b>Export</b>	<p><b><u>Commercial</u></b> What’s allowed:</p> <ul style="list-style-type: none"> <li>CITES pre-Convention worked ivory, including antiques.</li> </ul> <p><b>What’s prohibited:</b></p> <ul style="list-style-type: none"> <li>Raw ivory.</li> </ul>	<p><b><u>Commercial</u></b> The final rule <b>further restricts</b> commercial exports to only those items that meet the criteria of the ESA antiques exemption.* Raw ivory remains prohibited regardless of age.</p>

	<p><b><u>Noncommercial</u></b>  <b>What's allowed:</b></p> <ul style="list-style-type: none"> <li>• Worked ivory.</li> </ul> <p><b>What's prohibited:</b></p> <ul style="list-style-type: none"> <li>• Raw ivory.</li> </ul>	<p><b><u>Noncommercial</u></b>  The final rule <b>further restricts</b> noncommercial exports to the following categories:</p> <ul style="list-style-type: none"> <li>• Only those items that meet the criteria of the ESA antiques exemption.*</li> <li>• Worked elephant ivory that was legally acquired and removed from the wild prior to February 26, 1976, and is either: <ul style="list-style-type: none"> <li>○ Part of a household move or inheritance;</li> <li>○ Part of a musical instrument; or</li> <li>○ Part of a traveling exhibition.</li> </ul> </li> <li>• Worked ivory that qualifies as pre-Act.</li> <li>• Law enforcement and <i>bona fide</i> scientific specimens.</li> </ul> <p>Raw ivory remains prohibited regardless of age.</p>
<p><b>Foreign commerce</b></p>	<p>There are no restrictions on foreign commerce.</p>	<p>The final rule includes the following changes for foreign commerce:</p> <ul style="list-style-type: none"> <li>• <b>Restricts</b> foreign commerce to: <ul style="list-style-type: none"> <li>○ items that meet the criteria of the ESA antiques exemption,* and</li> <li>○ certain manufactured or handcrafted items that contain a small (<i>de minimis</i>) amount of ivory.</li> </ul> </li> <li>• <b>Prohibits</b> foreign commerce in: <ul style="list-style-type: none"> <li>○ sport-hunted trophies, and</li> <li>○ ivory imported/exported as part of a household move or inheritance.</li> </ul> </li> </ul>
<p><b>Sales across State lines (interstate commerce)</b></p>	<p><b>What's allowed:</b></p> <ul style="list-style-type: none"> <li>• Ivory lawfully imported prior to the date the African elephant was listed in CITES Appendix I (January 18, 1990)—[seller must demonstrate].</li> </ul>	<p>The final rule includes the following changes for interstate commerce:</p> <ul style="list-style-type: none"> <li>• <b>Further restricts</b> interstate commerce to only: <ul style="list-style-type: none"> <li>○ items that meet the criteria of the ESA antiques exemption,* and</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>Ivory imported under a CITES pre-Convention certificate—[seller must demonstrate].</li> </ul>	<ul style="list-style-type: none"> <li>certain manufactured or handcrafted items that contain a small (<i>de minimis</i>) amount of ivory. **</li> <li><b>Prohibits</b> interstate commerce in: <ul style="list-style-type: none"> <li>ivory imported under the exceptions for a household move or inheritance, or for law enforcement or genuine scientific purposes, and</li> <li>sport-hunted trophies.</li> </ul> </li> </ul>
<b>Sales within a State (intrastate commerce)</b>	<p>What’s allowed:</p> <ul style="list-style-type: none"> <li>Ivory lawfully imported prior to the date the African elephant was listed in CITES Appendix I (January 18, 1990)—[seller must demonstrate].</li> <li>Ivory imported under a CITES pre-Convention certificate—[seller must demonstrate].</li> </ul>	The final rule does not include any changes for intrastate commerce.
<b>Noncommercial movement within the United States</b>	Noncommercial use, including interstate and intrastate movement within the United States, of legally acquired ivory is allowed.	The final rule does not include any changes for noncommercial movement within the United States.
<b>Personal possession</b>	Possession and noncommercial use of legally acquired ivory is allowed.	The final rule does not include any changes for personal possession.

\*To qualify for the ESA antiques exemption, an item must meet all of the following criteria [seller/importer/exporter must demonstrate]:

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

Under Director’s Order No. 210, as a matter of enforcement discretion, items imported prior to September 22, 1982, and items created in the United States and never imported must comply with elements A, B, and C above, but not element D.

\*\* To qualify for the *de minimis* exception, manufactured or handcrafted items must meet all of the following criteria:

- (i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;
- (ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;
- (iii) The ivory is a fixed or integral component or components of a larger manufactured or handcrafted item and is not in its current form the primary source of the value of the item, that

- is, the ivory does not account for more than 50 percent of the value of the item;
- (iv) The ivory is not raw;
  - (v) The manufactured or handcrafted item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50 percent of the item by volume;
  - (vi) The total weight of the ivory component or components is less than 200 grams; and
  - (vii) The item was manufactured or handcrafted before the effective date of this rule.

**Is it legal for me to keep my lawfully acquired elephant ivory?**

Yes. This ESA 4(d) rule and other federal wildlife laws and regulations such as CITES, the ESA, and the AfECA do not prohibit possessing or display of ivory, provided it was lawfully acquired. There is no certification requirement or process to register ivory items and you do not need a permit from the Service to possess or display ivory for noncommercial purposes. We recommend that you maintain any records you have that demonstrate the origin and chain of ownership of the items. We also suggest that you provide all documentation to any future gift recipient of your elephant ivory items. Check to make sure that you are also in compliance with local and state laws. Contact your [state](#) wildlife agency to check on their requirements.

**Will this ESA 4(d) rule impact activities with other types of ivory?**

No. This rule regulates only African elephants and African elephant ivory. Asian elephants and parts or products from Asian elephants, including ivory, are regulated separately under the ESA. Ivory from marine species, such as walrus, is also regulated separately under the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.). Ivory from extinct species, such as mammoths, is not regulated under statutes implemented by the Service.

**If I am selling an item made from walrus or another non-African elephant ivory, such as a Native Alaskan handicraft, will I need documentation to prove it's not African elephant ivory?**

This rule applies only to African elephants and African elephant ivory. It does not impose any documentation requirements for non-African elephant ivory. However, depending on the species, other regulatory requirements may apply. For example, walrus ivory is regulated under the Marine Mammal Protection Act. It is important for sellers to know the species involved so that they can determine what regulatory requirements apply.

**Can I donate or give away ivory?**

Yes. This ESA 4(d) rule and other federal wildlife laws and regulations such as CITES, the ESA, and the AfECA do not prohibit donating or giving away your ivory specimen, or receiving an ivory item as a donation or a gift, provided it was lawfully acquired and there is no exchange for other goods or services involved. We recommend that you provide the recipient with any records or documentation you have that demonstrates the origin and chain of ownership of the items. Check to make sure that you are also in compliance with local and state laws.

**Do I need a permit to import my African elephant personal sport-hunted trophy?**

Yes, under the provisions of the 4(d) rule, an ESA threatened species import permit is required for all African elephant personal sport-hunted trophies, including CITES

Appendix-II specimens. Import of sport-hunted African elephant trophies is limited to two sport-hunted trophies per year. Visit our sport-hunted trophies permits [webpage](#) for additional information.

### **What is the *de minimis* exemption?**

The final rule provides an exemption from prohibitions on selling or offering for sale in interstate and foreign commerce for certain manufactured items that contain a small (*de minimis*) amount of ivory that meet the following conditions:

- A. If the item is located in the United States, the ivory must have been imported prior to January 18, 1990, or imported under a [CITES pre-Convention certificate](#) with no limitation on its commercial use.
- B. If the item is located outside of the United States, the ivory must have been [removed from the wild prior to February 26, 1976](#).
- C. The ivory is a fixed or integral component or components of a larger manufactured item and is not the primary source of the value of the item, that is, the ivory does not account for more than 50 percent of the value of the item.
- D. The ivory is not raw.
- E. The manufactured item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50 percent of the item by volume.
- F. The total weight of the ivory component or components is less than 200 grams.
- G. The item must have been manufactured before the effective date of the final rule.

### **What types of items are likely to qualify for the *de minimis* exception?**

When we proposed the 200-gram limit we had a particular suite of items in mind. The following types of items may qualify for the *de minimis* exception: many musical instruments (including many keyboard instruments, with ivory keys, most stringed instruments and bows with ivory parts or decorations, and many bagpipes, bassoons and other wind instruments with ivory trim); most knives and guns with ivory grips; and certain household and decorative items (including teapots with ivory insulators, measuring tools with ivory parts or trim, baskets with ivory trim, walking sticks and canes with ivory decorations, and many furniture pieces with ivory inlay, etc.). However, to qualify for the *de minimis* exception, all of the above criteria must be met (either A or B and C-G)..

### **What types of items are not likely to qualify for the *de minimis* exception?**

Examples of items that we do not expect would qualify for the *de minimis* exception include chess sets with ivory chess pieces (both because we would not consider the pieces to be fixed or integral components of a larger manufactured item and because the ivory would likely be the primary source of value of the chess set), an ivory carving on a wooden base (both because it would likely be primarily made of ivory and the ivory would likely be the primary source of its value), and ivory earrings or a pendant with metal fittings (again both because they would likely be primarily made of ivory and the ivory would likely be the primary source of its value).

### **How do I demonstrate that my item meets the criteria to qualify for the *de minimis***

### **exception?**

To qualify for the *de minimis* exception, an item must meet the criteria provided above. We consider an item to be made wholly or primarily of ivory if the ivory component or components account for more than 50 percent of the item by volume. Likewise, if more than 50 percent of the value of an item is attributed to the ivory component or components we consider the ivory to be the primary source of the value of that item. Value can be ascertained by comparing a similar item that does not contain ivory to one that does (for example, comparing the price of a basket with ivory trim/decoration to the price of a similar basket without ivory components). Though not required, a [qualified appraisal](#) or another method of documenting the value of the item and the relative value of the ivory component, including, information in catalogs, price lists, and other similar materials, can also be used. We will not require ivory components to be removed from an item to be weighed.

### **What does 200 grams of ivory look like?**

A piece of ivory that weighs 200 grams is slightly larger than a cue ball. The 200-gram limit is large enough to accommodate the white key veneers on an 88-key piano. Click here for photographs of ivory items of various weights. **\*\*NOTE: The items in these photographs would not qualify for the *de minimis* exception because they are made wholly of ivory.** These photographs are only intended to illustrate the size of 200g of ivory. To qualify for the *de minimis* exception, an item would need to meet all of the criteria listed above.

### **What is foreign commerce?**

Foreign commerce does not include import or export activities. Foreign commerce is defined in section 3 of the Endangered Species Act and applies to individuals or entities subject to U.S. jurisdiction. The term “foreign commerce” includes, among other things, any transaction—

- A. between persons within one foreign country;
- B. between persons in two or more foreign countries;
- C. between a person within the United States and a person in a foreign country; or
- D. between persons within the United States, where the wildlife in question is moving in any country or countries outside the United States.

### **What is meant by the ESA antiques exemption?**

Under the ESA, an antique is an item that meets all of the following criteria\*:

- A. It is 100 years or older.
- B. It is composed in whole or in part of an ESA-listed species.
- C. It has not been repaired or modified with an ESA-listed species after December 27, 1973.
- D. It is being or was brought in to the United States through a [port](#) designated for the import of endangered species antiques.

\*Under Director’s Order 210, as a matter of enforcement discretion, items imported prior to September 22, 1982, and items created in the United States and never imported must comply with elements A, B, and C above, but not element D.

Antiques that meet these criteria (ESA antiques) are exempt from ESA prohibitions and the provisions in the final rule. ESA antiques may be sold in interstate and foreign commerce and may be imported or exported without the need for an ESA permit. However, CITES and other import/export requirements must still be met. In addition, the moratorium on import of African elephant ivory under the African Elephant Conservation Act remains in effect for antiques and other African elephant ivory (other than sport-hunted trophies).

**How do I demonstrate that my item meets the criteria to qualify as an antique under the ESA?**

Under the ESA, a person claiming the benefit of the antiques exemption has the burden of demonstrating that the item qualifies for the exemption. This is true for all ESA-listed species, including African elephants. We have provided guidance, in the [Appendix to Director's Order 210](#), on ways to demonstrate that an item qualifies as an ESA antique.

We want to clarify that forensic testing is not necessarily required. Provenance and age may be determined through a detailed history of the item, including but not limited to, family photos, ethnographic fieldwork, art history publications, or other information that authenticates the article and assigns the work to a known period of time or, where possible, to a known artist or craftsman. A [qualified appraisal](#) or another method, including using information in catalogs, price lists, and other similar materials that document the age by establishing the origin of the item, can also be used.

**What is a CITES pre-Convention certificate?**

A CITES pre-Convention certificate can be issued for specimens that were taken from the wild before the species was listed under CITES in order to authorize export or re-export, provided certain criteria are met. For the African elephant, the pre-Convention date is February 26, 1976. It is not necessary to apply for a CITES pre-Convention certificate unless you are seeking authorization to export or re-export an item.

U.S. residents may apply to the U.S. Fish and Wildlife Service's Division of Management Authority, Branch of Permits using form 3-200-23, for a CITES pre-Convention Certificate for the purpose of exporting an item from the United States. If you wish to import an item into the United States, this authorization must be obtained from the exporting country. A list of CITES Management Authorities is available on the [CITES Secretariat's website](#).

CITES documents are not needed or issued for the possession, donation or sale of ivory within the United States; however, you must meet certain criteria to engage in commercial activities with ivory (see the table above). There is no registration process to assess or certify personally owned ivory, and you do not need a permit from the U.S. Fish and Wildlife Service to possess your legally acquired ivory items. We do recommend that you maintain records and documents showing the provenance of your ivory items.

**Do I need a CITES pre-Convention certificate or other permit to sell items that qualify as ESA antiques or for the *de minimis* exception here in the United States?**

No.

If you wish to sell your African elephant ivory item across state lines (interstate commerce), you will need to be able to demonstrate that your ivory either qualifies as an ESA antique or meets the *de minimis* criteria.

You may sell your African elephant ivory items within a state (intrastate commerce) if you can demonstrate that your ivory was lawfully imported prior to the date that the species was listed in CITES Appendix I (January 18, 1990 for the African elephant). This proof could be in the form of a CITES pre-Convention certificate, a datable photo, a dated letter or other document referring to the item.

You do not need to apply for a permit or contact our office to conduct intrastate or interstate commerce with elephant ivory; however, you should have all documentation available to demonstrate the legality of the sale, if asked. We would also suggest that you provide all documentation to the buyer of your elephant ivory items.

Check to make sure that you are also in compliance with local and state laws. Contact the [state](#) to check on their requirements.

### **Do I need a CITES pre-Convention certificate or other permit to import or export items that qualify as ESA antiques?**

International trade in CITES specimens, including ESA antiques, requires CITES documents.

### **What is a pre-Act specimen under the Endangered Species Act?**

Specimens (e.g., elephant ivory, hair or leather) considered pre-Act may be exempt from standard prohibitions on import or export. To qualify as pre-Act, a specimen must:

- Have been held in captivity or in a controlled environment prior to December 28, 1973, or prior to the date of first listing under the ESA; and
- Such holding or use and any subsequent holding or use was not in the course of a commercial activity.

### **Director's Order 210 refers to worked African elephant ivory that "was legally acquired prior to February 26, 1976." What does that mean?**

February 26, 1976, is the date the African elephant was first listed under CITES (the pre-Convention date). An item that contains African elephant ivory that was removed from the wild prior to February 26, 1976, is considered to be a pre-Convention specimen. This does not mean that the current owner must have purchased or acquired it prior to 1976, but that the item was manufactured from ivory that was taken from the wild prior to 1976. For example, a musical instrument that was manufactured in 1965 using African elephant ivory would be considered a pre-Convention specimen. Likewise, an instrument manufactured in 1985 using ivory acquired by the manufacturer in 1975 would also be considered a pre-Convention specimen. Since it is unlawful to possess specimens that have been traded contrary to CITES or taken in violation of the ESA, the ivory must have been legally acquired.

**What requirements must be met to import African elephant ivory as part of a household move or inheritance?**

African elephant ivory can be imported for personal use as part of a household move or inheritance provided the ivory was removed from the wild before February 26, 1976, and the item is accompanied by a valid [CITES pre-Convention certificate](#). Items are considered part of a household move if they are household effects included when moving your residence to or from the United States provided you own the specimen and are moving it for personal use and you import or export your household effects within one year of changing your residence from one country to another.

**What requirements must be met to import African elephant ivory as part of a musical instrument?**

Worked African elephant ivory can be imported as part of a musical instrument provided that the ivory was [legally acquired](#) before February 26, 1976, and the musical instrument containing elephant ivory is accompanied by a valid CITES musical instrument certificate or an equivalent CITES document that meets the requirements of [CITES Resolution Conf. 16.8](#). Raw African elephant ivory cannot be imported as part of a musical instrument.

**What requirements must be met to import African elephant ivory as part of a traveling exhibition?**

Worked African elephant ivory may be imported as part of a traveling exhibition, such as a museum or art show, provided the ivory was [legally acquired](#) prior to February 26, 1976, the person or group qualifies for a CITES traveling exhibition certificate, and the item containing elephant ivory is accompanied by a valid CITES traveling exhibition certificate or an equivalent CITES document that meets the requirements of [50 CFR 23.49](#). Raw African elephant ivory cannot be imported as part of a traveling exhibition.

**What activities with African elephant ivory will not be impacted by the final rule?**

There will be no practical impact on the commercial import of African elephant ivory given the import prohibitions already in place under the African Elephant Conservation Act moratorium. Similarly, restrictions on intrastate commerce will remain unchanged under the final rule, since the ESA does not apply to sales within a state. However, CITES “use-after-import” provisions (in 50 CFR 23.55) continue to apply to sales within a state. In addition, certain [states](#) have enacted additional restrictions on the trade of ivory within a state. There is nothing in the ESA, this proposed rule, the AfECA, or our CITES regulations that prohibits the possession, donation or noncommercial interstate movement of listed species, including their parts or products, provided they were lawfully acquired. This will not change under the final rule.

**Example scenarios:**

**I have a violin bow that contains a small amount of ivory. Under the final rule, will I be able to sell the bow in the United States, export it for sale, or take it overseas for a concert?**

If the bow meets the requirements for the [de minimis](#) exception, including that the ivory was removed from the wild prior to February 26, 1976, and that the total weight of the ivory is less than 200 grams you will be able to sell it in the United States.

If the bow qualifies as an [ESA antique](#) you will be able to export it for sale.

If the bow meets the requirements for import/export of a musical instrument, including that the ivory was removed from the wild prior to February 26, 1976, it is accompanied by a CITES musical instrument certificate or equivalent CITES document, the bow is securely marked or uniquely identified, and it will not be sold or otherwise transferred while outside the United States (see paragraph (e)(4) in the proposed rule text for details) you can travel with it internationally for personal use, including to perform in concerts.

**I have an antique ivory figurine. Under the final rule, will I be able to sell it online?**

If you can demonstrate that it qualifies as an [ESA antique](#), you will be able to sell it. However, state laws and online retailer policies may further restrict or prohibit ivory sales. Always consult with your state and the retailer to determine their requirements.

**I have an elephant head with tusks that my father killed in 1949. Will I be able sell it across state lines?**

No. Under the final rule revising the African elephant 4(d) rule, you would not be able to sell the tusks. Ivory imported as a sport-hunted trophy that does not meet the criteria for an [ESA antique](#) cannot be sold.