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RE: Comment on African Elephant 4(d) Proposed Rule,
87 FR 68975 (November 17, 2022),
Docket # FWS-HQ-IA-2021-0099
And OMB Control Number 1018-African Elephant

20 March, 2023

Dear Secretary Deborah Haaland,

This is a joint comment on behalf of the Governments of Botswana, Namibia, South Africa, Tanzania, Zambia and Zimbabwe opposing the above Proposed African Elephant special 4(d) rule and comments on the Draft Environmental Assessment and Economic Analysis Revisions to the African Elephant Rule under Section 4(d) of Endangered Species Act (50 CFR 17.40(e)) as published in the same Docket # FWS-HQ-IA-2021-009. All page references are to the Federal Register Notice, 87 FR 68975.

We, six African Range States together, host a minimum of 330,000 elephants which represents approximately 80% of the total African elephant minimum population (415,000) as estimated in 2015 (IUCN 2016). Each of our countries utilize “safari hunting”/ “sport hunting” as a primary conservation tool and possess undisputable experience on the management of the species. We are convinced that the proposed rule conflicts with the best interests of our elephant and will reduce the benefits of our successful conservation strategies as well as unnecessarily add to the cost of administration.

It is our considered view that the proposed changes are at variance with the current policy trajectory that the USA government is pursuing as far as the conservation Agenda in Africa is concerned. The proposed changes have far-reaching implications than indicated. We are also extremely concerned that we were not consulted beforehand. The USA government is known for upholding principles of democracy and good governance, including public consultation on policy matters which directly affect us (concerned range states). Nevertheless, the timing and the short initial comment period have largely disregarded us (affected range nations) and failed to take into consideration the far-reaching negative consequences that are retrogressive for wildlife conservation in our countries.

The proposal is not in sync with conservation priorities for the African elephant and it does not address the priorities identified for the effective protection of this keystone species, rendering it unnecessary and not advisable. It is not necessary because of the kind and low volume of the trade. It is also not advisable because it would obstruct and reduce the proven positive enhancement arising from the regulated hunting. Adding unnecessary restrictions means reducing the trade and its benefits, and hence the value of wildlife is compromised particularly in the eyes of local communities bearing the brunt of living with such charismatic and yet very dangerous animals. The import of elephant hunting

trophies and live elephant trade should be facilitated, not further restricted and reduced. Failure to recognize that common understanding will yield undesirable outcomes including significant loss of elephant habitat as alternative land uses will replace elephant habitat outside protected areas.

The following table shows that the current estimated population for the African elephant and the legal hunting off-take over the last decade it is not a threat to elephants but it represents a crucial conservation tool providing financial resources, securing habitat and livelihood opportunities.

Hunting Offtake											
Country	Estimated population (2022)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Botswana	120,000-160,000 ¹	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	200	191
Namibia	24,000 ²	50	74	59	69	50	35	36	22	23	51
South Africa	44,000 ³	57	64	75	105	77	39	21	3	0	0
Tanzania	52,000-58,000 ⁴	35	7	3	2	0	3	5	6	5	14
Zambia	21,800-27,500 ⁵	N/A	N/A	N/A	12	12	17	21	13	16	11
Zimbabwe	76,000-93,000 ⁶	286	176	196	197	177	196	193	79	193	176
TOTAL	337,800-406,500	428	321	333	385	316	290	276	123	437	443

Table 1. Current elephant estimated populations and legal hunting offtake (source: official Government data) 2013-2022 in respondent countries.

We disagree a) that the rise in international trade in live elephants poses a threat to their survival and needs unilateral measures such as the ones proposed in this rule when CITES is still discussing the best way to tackle this issue and the volume is of no possible consequence, as data in our possession show that there has been no rise and the level of capture of live elephants is biologically negligible; b) that the clarification of enhancement requirements shall be done through a cost shifting annual “certification” process rigid, with highly unacceptable inflexible criteria and c) that the CITES National Legislation Process be unilaterally bypassed without even following the process of CITES Resolutions Conf.8.4 (Rev.CoP15) on *National laws for implementation of the Convention* and Resolution Conf.14.3 (Rev. CoP18) on *CITES compliance procedures*.

We prefer the current system, i.e., **Alternative 1**, as set forth in the “Draft Environmental Assessment and Economic Analysis Revisions to the African Elephant Rule under Section 4(d) of Endangered

¹ DWNP 2021 Botswana Elephant Management Plan and Action Plan 2021-2026. Gaborone. Ministry of Environment, Natural Resources Conservation and Tourism.

² Namibia Ministry of Environment, Forestry and Tourism, 2020. National Elephant Conservation and Management Plan 2021/2022-2030/2031

³ Scientific Authority of South Africa. 2022. Non-detriment finding for *Loxodonta africana* (African savanna elephant)

⁴ (In prep.) MNRT. Tanzania Elephant Management and Action Plan 2023-2033. Ministry of Natural Resources and Tourism, Dodoma, Tanzania.

⁵ DNPW (2021) Strategic Elephant Conservation and Management Plan for Zambia, 2021 - 2026. Department of National Parks and Wildlife, Chilanga, Zambia

⁶ Zimbabwe National Elephant Management Plan (2021 – 2025). Zimbabwe Parks and Wildlife Management Authority. Harare

Species Act (50 CFR 17.40(e))” as published in the same Docket # FWS-HQ-IA-2021-0099 containing the proposed 4(d) rule.

The CITES Category One Designation Unconditional Prohibition

The reason each country is or is not in Category One is particular to that country so we do not address that in this joint comment on a country specific basis. That itself is the point. The reason for not being classed in category one varies so is not universal or so important to warrant disrupting trade that enhances the survival of elephant. It is not relevant to elephant enhancing trade.

Additionally, the proposal by the USA Government conflicts with the National Legislation Project because it does not conform with CITES Resolutions Conf. 8.4 (Rev.CoP15) and 14.3 (Rev. CoP18) which provides for the Standing Committee recommending the suspension of commercial or all trade in specimen of one or more CITES-listed species from a certain country only as a last resort after all other options have been exhausted (see point 30 of Resolution Conf.14.3).

The CITES Standing Committee has not yet determined to suspend trade at all of any kind in the signatory. Consequently this proposal by the USA Government would conflict with and disrupt the CITES process and prohibit activities that enhance the survival of elephant for an irrelevant reason. That is not advisable and certainly not necessary. It would be unilateral action that would prematurely eliminate enhancement without rational cause. It is ill-advised.

It is therefore inconceivable that the USFWS wants, in the proposed rule, to implement a ban unilaterally without waiting for the bilateral consultations or for a Decision of the Standing Committee as provided in the relevant CITES Resolutions.

The Annual Certification Requirement, 50 CFR 17.40(e)(6)(ii)(A-G) (G1-G8)

The proposed rule mandates that each range country in too short an annual cycle provide a “properly documented and verifiable certification” “dated no earlier than 1 year prior” to the applicant’s hunt. This specifies 7 categories of alleged to be enhancement items the range country has to compile and verifiably certify to, the last (specifying use of funds) having 8 sub-parts. The proposal creates a new obligation upon the USFWS to publish all the information in the Federal Register. All of this is a change of procedure as well as substance that shifts USFWS costs to range countries, increases costs, speeds up the time cycle while adding procedural delays. Moreover, the proposal requests suggestions of other items to be certified to make the criteria “even more robust”⁷ so we do not know what all will be mandated. It is noteworthy that anti-hunting organizations are touting and supporting the proposal. It

⁷ (We also seek comment from the public on what viable opportunity exists for even more robust conservation of African elephants, at 68989; We seek comments concerning whether we should consider including any other prohibitions, conditions, or exceptions.... that will continue to be required by the 4(d) rule for the importation of African elephant sport-hunted trophies....., pg 68989).

is clear that the original items to be certified are rigid, stand-alone unconditional mandates, rather than any longer factors to take into consideration when making an enhancement finding. Failure to fully and satisfactorily provide a certified item is a *de facto* basis for denial of all imports from that country for that year. The completion of all mandates in the short one-year cycle is hard to imagine and has never before been accomplished. All of this is of great concern and objectionable. Each separate certified condition will reduce beneficial trade, not benefit the species. Reduced live elephant and trophy trade is reduced enhancement so it is imperative that it be necessary and advisable. It clearly is not.

As well as objecting to the cost shifting certification process an abbreviated statement of concern and objection about each part of the annual certification follows:

Certification (A)- *African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain sport hunting at the level authorized by the country.* This is a factor that can be considered but should not be an annual or mandated requirement. Certainly, hunting can enhance elephant that are in decline (not stable or increasing) so this provision is over-reaching. Threatened listed species are likely to be in decline but still need enhancement or the benefits derived from non-commercial trade.

It is worded to be an absolute prohibition because it must be certified and published as a documented and verifiable fact. What about during periods of drought, when populations grow to excess and reduction is advisable? Don't declining populations need enhancement, especially when the enhancement activity directly counteracts the cause of the decline like poaching, loss of habitat, inadequate management funding, etc? Elephant in decline need enhancement as much if not more than those that are not in decline. This exact criterion was proposed, rejected and withdrawn in 1993.⁸

We have evidence that sport hunting benefits and reduces or even reverses population decline regardless of species status. The long-term decline of African elephant numbers is inexorable so this proposed requirement that the population be stable or increasing is foredoomed or programmed by design to prevent the issuance of enhancement permits. The current drought and excessive elephant populations in Southern Africa are likely to result in annual decline of elephant so this requirement is programmed to provide a negative enhancement decision.

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

Of course, annual population surveys are not warranted or possible. A survey every 3 to 5 years is the most to expect and the authorities will no doubt be dependent up funding assistance by third parties. Is not this programmed to fail or foredoomed?

⁸ Federal Register Vol. 58 no. 25 at 68977 (Feb. 9, 1993)

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

Of course, all the relevant range countries (countries that have been receiving import permits at some point over the last decade) recognize elephant as a valuable resource but conservation hunting is essential to the realization of that value. For a fact, the hunting is a large component of the legal and practical capacity for management. It would be advisable to provide some examples of what might be evidence of the desired capacity- examples, not mandates.

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

The meaning of this is not clear. How do authorities certify this condition each year other than just stating it to be a fact?

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

This is extremely concerning. Like the population certification (A) above, reduction in range is inevitable therefore this certification by design dooms imports permits. Habitat range and condition is a status issue more than one of whether or not the conservation hunting benefits the species that may or may not be losing habitat in any particular year and country. It is a given that hunting can help secure and even grow habitat, but ultimately habitat will shrink and be degraded. That does not mean that hunting does not secure and protect elephant habitat; on the contrary, this is epitomized by the hundreds of millions of acres of gazetted hunting areas that far exceed the space of national parks.

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

How does a country certify to this and is this proof of enhancement or really something else? It is obvious that the imports arise from legitimate, licensed, regulated sport-hunting. It is the very definition of the activity. The point is that a lot of this certification is not about enhancement, rather about management and monitoring.

CERTIFICATION (G) *Funds derived from the involved sport hunting are applied primarily to African elephant conservation, including funds used for:* (Then describes eight types of expenditures and activities).

There is no doubt that funds can and do enhance elephant survival in numerous ways and this category captures some of those. Nevertheless, the wording that the derived funds must be “applied primarily” to elephant conservation is a concern. First, the phrase “derived funds” is not defined. Certainly, it cannot mean all the money that changes hands, because as in most enterprises, most funds are essential for costs or overhead with a small net to income. If it means the operator is no longer free to pay his overhead, then it too is foredoomed. These terms must be defined and must be within reason.

Depending on whose derived funds (government or operator) and the meaning of “derived funds” and “primary” this is likely to be too onerous.

Likewise, Governments of the signatories’ Range States have been using funds generated from other sources such as mining, agriculture, fisheries to support elephant conservation. A good example is during COVID 19 pandemic where money generated from elephant hunts was insufficient to cater for elephant protection.

The item (8) requirement that “100 percent of the elephant meat” be donated to local communities is beyond the control of the government as it falls upon the operators’ client who owns the licensed elephant. Furthermore, clients do not prepare the certificate. Moreover, some meat may go to the staff and their families, as custom dictates. In some regions the local people do not eat elephant meat and in other areas there are no local communities at all. This item is written inflexibly as if it is an absolute act that will be considered enhancement, when in reality there needs to be flexibility. A certificate and verifiable proof of one hundred percent in every instance or the country-wide hunting is too inflexible, excessive and unrealistic. Furthermore (G) is not aligned to our general understanding of community benefits because such benefits should be defined by the communities.

Publication for Transparency

The ESA is unambiguous that import permitting of threatened listed species is not to be published and also outlines what is to be published. The proposal overrides that intent of Congress. The proposed publication would reverse the policy and practice since the inception of the ESA. The commitment to publish any or all of the data creates a litigation invitation to those that are opposed to sustainable use and the use of conservation hunting as a tool to enhance the survival.

The proposal is not clear just what documents are to be published but apparently the documents could be required from all three levels-national government, operator and individual hunt. It needs to be made more specific now rather than when the anti-hunting interests that have been clamoring for this bring it to court for enforcement, expansion, clarification and fees and costs, and to obstruct the permitting regime.

Publication in the Federal Register as proposed requires extra staff, formatting, scheduling, etc. which adds costs and delay to an overtaxed office that is already years behind in permitting. Full rule making that allow import permits several years in advance would be a preferred procedure to the new case-by-case, presumably three level practice.

A lot of the information is considered sensitive, proprietary, confidential, and privileged. Providing the details in the certificate would be problematic.

Friends of Animals Petition

We are opposed to the Friends of Animals Petition to end all trophy imports. The petition is not worthy of comment. The petitioner is an anti-hunting organization that holds its subjective sense of ethics first, before and above the survival of African elephant, and the welfare of Africa and its people. It is of concern that anti-hunters like FoA are the primary supporters of the proposed rule.

Conclusion

The proposal solicits comments on what more can be added to the 4(d) rule for “even more robust conservation of African elephants” while it wholly ignores the far greater number and kind of Questionnaires that the USFWS has periodically sent to each range country. We strongly disagree with the representation that any of the proposed clarifications or additions to the 4(d) rule substantively or procedurally will improve elephant conservation. The added restrictions will reduce imports thus reduce enhancement rather than ensure it. Many of the revisions are really prohibitions or a ban on imports. Most of the certifications increase the burden on the range states to no advantage. The changes are added restrictions without justification or genuine benefit that will ultimately threaten elephants and their habitats.



The changes are not “necessary” and are not “advisable.” If adopted, the proposal would not prove enhancement or incentivize enhancement. It is diverging from the customary enhancement questions periodically sent by USFWS to African range countries, with unnecessary or unrealistic factors. The proposal primarily serves as regulation for the purpose of regulation without any added benefits to elephant conservation. The changes would reduce or prohibit most if not all elephant trophy imports, live elephants’ imports and disrupt the conservation benefits and the survival of the elephant. Added rigidity and inflexibility of the punishingly short cycle annual certificate system and added burden of publication in the Federal Register is an added cost that the elephant and rural communities will bear. This is unconscionable cost shifting to developing countries.



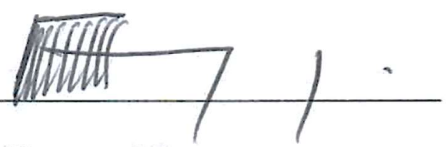
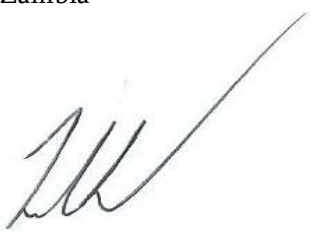
We urge concentrating on removal of unnecessary regulations and regulation rigidity.

We urge FWS to immediately streamline and expedite import permitting. That includes doing a full, simultaneous enhancement rulemaking as soon as possible for the six relevant countries for three years in advance and periodically thereafter.

The proposed elephant rule should be fully withdrawn. It is not necessary nor advisable for elephant conservation.

Signed by

<p>On behalf of the Government of Botswana</p>  <p>Dr. Kabelo Senyatso Director</p>	<p>On behalf of the Government of Namibia</p>  <p>Colgar Sikopo Deputy Executive Director</p>
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