

Policies on Protected/Endangered Species and Relevant Federal Laws

Resources

For federal regulations regarding the possession, transfer, sale, purchasing, trading, marketing and transporting of **Protected Animals** and animal part(s) that are listed in the Endangered Species Act of 1973, Appendix A; please visit http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp

For federal regulations regarding the possession, transfer, sale, purchasing, trading, marketing and transporting of **Migratory Birds**, as defined by the Migratory Bird Treaty Act of 1918 (and as amended in 1936, 1960, 1968, 1969, 1974, 1978, 1986 and 1998); please visit <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtintro.html>

Terminology

African Elephant Conservation Act (AECA) of 1989 – This is a U.S. Federal Law that prohibits the export of any African Elephant ivory and strictly regulates its importation. (www.fws.gov/laws/lawsdigest/ELEPHNT.HTML).

African Ivory means – Ivory originating from an African Elephant

Antiques (also “ESA Antiques” as defined by the Endangered Species Act of 1973 and amended in 1982, 1989 and 2014) and which antiques are associated with elephant ivory; is defined as any article or portion thereof that is not less than 100 years old and contains, in whole or in any part, African or Asian ivory and has not been repaired, amended or modified on or after December 28, 1973.

Asian Ivory means – Ivory originating from an Asian Elephant

CITES – Convention on International Trade of Endangered Species. CITES is a 1973 agreement between 80 countries, including the United States; to regulate the harvest, sale, possession and trade of certain animals and animal parts for the purpose of combating wildlife trafficking of endangered species. (<http://www.cites.org>).

Endangered Species Act of 1973 – This is a federal law that protects endangered species and regulates the importation and exportation of certain animals and animal parts. (<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>)

Federal Law (related to the transactions of ivory) means – Any United States federal law(s) that govern the possession, transfer, sale, purchasing, trading, marketing and transporting of Asian or African ivory. Any action involving ivory by an exhibitor related to federal law does not absolve the exhibitor of the responsibility to adhere to state law. State laws related to the possession, transfer, sale, purchasing, trading, marketing and transporting of Asian or African ivory vary widely and it is the responsibility of the exhibitor to know these laws.

“Pre-Act” means – Ivory transactions occurring before the Endangered Species Act of 1973.

“Raw” Ivory means – The tusk(s) of an elephant that have not been craved or amended from their original condition [as defined by the Endangered Species Act of 1973].

“Worked” Ivory means - The tusk(s) of an elephant that have been craved, scrimshawed, shaped, filed, or etched; whether made into an article or not, and have been altered from their original condition [as defined by the Endangered Species Act of 1973].

FAQ's

Can I currently sell elephant ivory products within the United States?

Yes. African elephant ivory that a seller can demonstrate was lawfully imported prior to January 18, 1990—the date that the African elephant was listed in CITES Appendix I—and ivory imported under a CITES pre-Convention certificate can be sold within the United States (across state lines and within a state). Asian elephant ivory sold in interstate commerce within the United States must meet the strict criteria of the ESA antiques exception. Because the current rules regarding interstate commerce are different for African elephant ivory compared to Asian elephant ivory, a seller must be able to identify the ivory to species. This could be demonstrated using CITES permits or certificates, a qualified appraisal, or documents that detail date and place of manufacture, etc.

Can I currently import antique items containing African elephant ivory for commercial purposes?

No. The U.S. Fish & Wildlife Service no longer allows any commercial importation of African elephant ivory. This prohibition, which was originally established via the 1989 African Elephant Conservation Act (AECA) moratorium, applies even to items that qualify as antiques.

Can I import African elephant ivory as part of a musical instrument?

Yes. You may import worked African elephant ivory as part of a musical instrument provided that the ivory was legally acquired before February 26, 1976; the ivory has not been transferred from one person to another person in the pursuit of financial gain or profit after February 25, 2014; the person or group qualifies for a CITES musical instrument certificate; 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.

Can I purchase a musical instrument containing African elephant ivory from another country and have it shipped to me?

No. Commercial import of musical instruments containing African elephant ivory is prohibited.

Can ivory be imported to manufacture new musical instruments?

No. Commercial import of African elephant ivory is prohibited.

Who maintains the burden of proof when trading, selling or possessing ivory?

The burden of proof is on the exporter or seller of items that are made from or contain ivory and must show that the antique article meets all of the criteria under the ESA Exemptions. Any transactions of elephant ivory within the United States must be accompanied by the appropriate ESA permits and documentation.

How do I obtain a permit?

Go to <http://www.fws.gov/international/permits/application-forms/>

Helpful Websites

<http://www.fws.gov/international/permits/antiques.html>

<http://www.fws.gov>

<http://www.fws.gov/international/pdf/factsheet-asian-elephant-ivory-2013.pdf>

<http://www.fws.gov/endangered/esa-library/>

http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf

<http://www.fws.gov/endangered/esa-library/pdf/glossary.pdf>