



Legal Issues: An Update on CITES Law Regarding Ivory Imports/Exports

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November 5, 2017

CITES, Endangered Species Act, Executive Order 210

There are three topics to consider when importing or export objects with protected animal products:

- **CITES (International Agreement)**
- **ENDANGERED SPECIES ACT (USA Policy)**
- **EXECUTIVE ORDER 210 (Ivory Ban - Strengthens US policy)**



CITES (the Convention on International Trade in Endangered Species)

CITES is an international agreement to which States (countries) adhere voluntarily. States that have agreed to be bound by the Convention ('joined' CITES) are known as Parties. Although CITES is legally binding on the Parties – in other words they have to implement the Convention – it does not take the place of national laws. Rather it provides a framework to be respected by each Party, which has to adopt its own domestic legislation to ensure that CITES is implemented at the national level.

CITES works by subjecting international trade in specimens of selected species to certain controls. All imports and exports of species covered by the Convention has to be authorized through a licensing system. Each Party to the Convention must designate one or more Management Authorities in charge of administering that licensing system and one or more Scientific Authorities to advise them on the effects of trade on the status of the species.

The species covered by CITES are listed in three Appendices, according to the degree of protection they need.



CITES (the Convention on International Trade in Endangered Species)

Appendices I and II

Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.

Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.

Appendix III

This Appendix contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.



CITES (the Convention on International Trade in Endangered Species)

The Asian elephant was listed on CITES Appendix I in 1975. Asian elephant ivory possessed prior to this date was “pre-Convention” and could be traded internationally for commercial purposes with valid CITES documentation.

The African elephant was listed on CITES Appendix II in 1976. International trade for primarily commercial purposes continued; exporting countries were required to make certain findings to ensure that export of ivory from their country was not causing a detriment to the survival of the species, and that it was legally acquired.

The African elephant was listed on CITES Appendix I in 1990. African elephant ivory possessed prior to this date was “pre-Convention” and could be traded internationally for commercial purposes with valid CITES documentation.



Endangered Species Act

The Endangered Species Act of 1973 (ESA) was signed on December 28, 1973, and provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range.

Says it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

.....

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.



Endangered Species Act

In addition to having a valid CITES, in order to import or export any object containing endangered species into the US, you must either have an ESA Permit, or fall under one of two exemptions

- Antique Exemption:** Objects must be over 100 years old to qualify for ESA Antique exemption. Additionally it is required to provide extensive backup documentation validating genus, species and age from a third party expert who is totally unrelated to the buyer/seller or lender/borrower. It is allowed to use the Genus covering all species (i.e. Chelonidae SP) on CITES, but must be specific on declaration.
- Pre-Act Exemption** – You must prove the specimen has NOT been commercially active after December 27, 1973 (date of ESA) in order to qualify for ESA Pre Act exemption status. You do NOT need species specific info OR third party attestation.



Ivory Ban

In response to the poaching crisis in Africa and Asia, in September 2013, the Clinton Global Initiative pledged \$80 million to leading wildlife advocacy groups to halt the trade in elephant ivory and rhinoceros horn. The State Department, under Hillary Clinton, identified wildlife trafficking as a means of funding terrorist groups in Africa and Asia.

In February 2014, the White House issued its “National Strategy for Combatting Wildlife Trafficking.” This called for a ban on the commercial trade in elephant ivory.

At the same time, wildlife groups approached legislators in New York and New Jersey to enact state bans on the sale of ivory.



Regulation of Elephant Ivory before February 2014

- The Asian elephant was listed as endangered under the ESA in 1976.
- The African elephant was listed as threatened under the ESA in 1978.
- Imports of all ESA listed species (including African and Asian Elephant ivory) were permitted under a “Special Rule” in 50 CFR 17.40(e).
- The Antiques Exception is the legal basis for the import, export and interstate-trade in antique Asian elephant ivory.
- Exports and interstate trade continued for objects already in the country. Non-commercial transactions not a problem.



Director's Order 210, February 25, 2014

The Order instructs US Fish and Wildlife Service to:

- **Ban commercial imports of all African Elephant Ivory**
- **To enforce existing restrictions on the commercial trade of all other protected species under the Endangered Species Act (ESA).**

What African elephant ivory can still be imported?

- Raw or worked African elephant ivory imported by a federal, state or tribal agency for law enforcement purposes
- Raw or worked African elephant ivory imported for scientific purposes that will contribute to the conservation of African elephants
- Worked African elephant ivory imported for personal use as part of a household move or an inheritance that meets specific criteria (see below)
- Worked African elephant ivory imported as part of a musical instrument that meets specific criteria (see below)
- Worked African elephant ivory imported as part of a traveling exhibition that meets specific criteria (see below)
- African elephant ivory as part of a personal sport-hunted trophy



Director's Order 210 – African Elephant Museum Exception

Currently, worked African elephant ivory can be imported for museum exhibitions only if the following criteria are satisfied:

- ✓ the ivory has not been transferred from one person to another in the pursuit of financial gain or profit after Feb. 25, 2014
- ✓ Meets the pre-act or antique exemption criteria for ESA
- ✓ the object is accompanied by a valid CITES travelling exhibition CITES certificate or an equivalent CITES document.

Raw African elephant ivory cannot be imported, even for museum loans.



TRAVEL CITES for Museum Exhibitions:

For African Elephant Ivory or Elephantidae Sp., the incoming CITES must be a TRAVELING EXHIBITION CITES CERTIFICATE. **For Loxodonta Africana specifically the Travel CITES is part of the requirement/allowance for importing and then exporting this species. It is also recommended to utilize a Traveling CITES certificate for all other ESA listed species imports that are subject to CITES as well.** This document acts somewhat like an ATA Carnet in that the Travel CITES is good for multiple imports and re-exports, and are valid for 3 years from issue. If the exporting authority cannot or will not issue the Travel CITES, than USFWS may accept as an equivalent document the standard CITES that contains the verbiage that is on the Travel CITES written in the special conditions box on the actual permit (see 50 CFR 23.49).

If for some reason the issuing CITES country cannot get a Travel CITES or equivalent document approved by USA Law enforcement, then we would need advanced permission from DMA office in Washington to allow. (see samples attached of travel CITES certificates and alternative CITES certificate with special condition language included in box 5)





EUROPEAN UNION

TRAVELLING-EXHIBITION CERTIFICATE
ORIGINAL

CONVENTION ON INTERNATIONAL
TRADE IN ENDANGERED SPECIES OF
WILD FAUNA AND FLORA

1. Certificate no.
530680/05

2. Valid until
17/11/2017

3. Owner of specimen(s) (name, permanent address and country of registration)
**National Maritime Museum, Park Row, London
SE10 9NF**

Signature of owner

4. Issuing Management Authority
**Animal and Plant Health Agency
UK CITES Management Authority
Centre for International Trade Bristol
Zone 1/17, Temple Quay House
2 The Square, Temple Quay
Bristol, BS1 6EB
Tel +0044(0)117 372 8774
Website: <https://www.gov.uk/cites-imports-and-exports>**

5. Special conditions:

- a) Valid for multiple cross-border movements and allowing the specimens to be displayed to the public in accordance with Art. 8 (3) Regulation (EC) No 338/97. Owner to retain original form.
 - b) The specimen(s) covered by this certificate may not be sold or otherwise transferred, in compliance with the provisions of Regulation (EC) No 338/97, in any State other than the State in which the exhibition is based and registered. This certificate is non-transferable. If the specimen(s) dies, is stolen, destroyed, lost, sold or otherwise transferred, this certificate must be immediately returned by the owner to the issuing Management Authority.
 - c) This certificate is not valid unless accompanied by a continuation sheet.
 - d) The certificate shall in no way affect the right of states to adopt stricter domestic measures regarding restrictions or conditions for the certified specimens, especially the holding/keeping of live animals.
- This certificate is valid only if the transport conditions conform to the Guidelines for Transport of Live Animals or, in the case of air transport, to the IATA Live Animal Regulations

6. Country of import
Various

7. Purpose of the transaction
Q

8. Security stamp no.
000159

9. Scientific name (genus and species) and common name of species
**Loxodonta africana
African Elephant**

10. Description of specimen/s, including identifying marks or numbers, age, sex
**CAR
One (1) Navigational instrument: Octant (1753). Mahogany frame and index arm, brass fittings, boxwood limb. Brass stop for index arm. Inlaid Ivory plate in the cross bar. Fiducial edge of Ivory at the end of the index arm. By George Adams (Senior).
Source: unknown (U) and pre-convention (O)**

11. Quantity
1



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 <p>EUROPEAN UNION CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA</p>	<p>TRAVELLING EXHIBITION CERTIFICATE CONTINUATION SHEET</p>
<p>Page <u>01</u> of <u>05</u></p>	
<p>1. Original certificate no. 530680/05</p>	<p>4. Issuing Management Authority Animal and Plant Health Agency UK CITES Management Authority Centre for International Trade Zone 1/17, Temple Quay House 2 The Square, Temple Quay Bristol, BS1 6EB Tel +0044(0)117 372 8774 Website: https://www.gov.uk/cites-imports-and-exports</p>
<p>8. Security stamp no. 000159</p>	
<p>3. Owner of specimen(s) (name, permanent address and country of registration) National Maritime Museum, Park Row, London SE10 9NF</p>	
<p>_____</p> <p>Customs office of import Date Signature Official Stamp</p>	<p>120-628237X 24/02/15</p>  <p>UKBE LHR</p> <p>Customs office of re-export Date Signature Official Stamp</p>
<p>JFK-WY</p> <p>24/02/2015</p> <p>_____</p> <p>Customs office of import Date Signature Official Stamp</p> 	<p>_____</p> <p>Customs office of re-export Date Signature Official Stamp</p>
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Antique Exception

To qualify for importer or exporter must:

- Show that it has not been repaired or modified with any ESA-listed species after Dec. 27, 1973; and
- Enter it into the US at a port designated for the import/export of endangered species antiques (see map to follow)
- prove that the object is over 100 years old;
- Provide genus and species of animal
- Must have third party expert attestations proving above



What are accepted methods to document the age and species of the ESA antique?

- Testing using scientifically approved aging methods by a laboratory or facility
- A third party qualified expert appraisal
- Via provenance through a detailed history of the object

What will the Service accept as a qualified appraisal?

- One done by a recognized professional appraiser
- The person executing the appraisal is not the importer, exporter, buyer, recipient, or seller of the article



Pre-Act Exemption

What are the options for objects that *do not* qualify for antique exemption?

- Supply provenance showing that the object was not in any commercial environment after December 27, 1973
- Supply Pre-Act Affidavit which must include genus and species (exact wording would be provided by Masterpiece)
- CITES Permit does not need to show specific species if not definitive, can be listed at higher taxonomy level (note: our declaration to law enforcement still requires species to best available evidence)

Apply for ESA Permit

- Can take up to 4 months and no guarantee of allowance



Topics of Discussion

- Main issues we deal with when putting together documentation for Import/Export ESA shipments
 - Documentation required as proof of genus/species and age
 - How to classify genus/species on CITES Permit and when specific species is required
 - Definition of commercial activity



Current Procedures

1. The current order states that the importer must provide documented evidence of species identification and age to demonstrate that the article qualifies as an ESA antique. This may include a qualified appraisal, documents that provide detailed provenance, and/or scientific testing. Notarized statements or affidavits by the importer or a CITES pre-Convention certificate alone are not necessarily adequate proof that the article meets the ESA exception.
- Per USFWS management in Washington DC, we as the experts must supply them with the best evidence available to prove age, genus and species. Burden of proof is on law enforcement to disprove this claim should they feel evidence is unjustified

(we will present this evidence as far in advance as possible and if any issues with local law enforcement we can then appeal to offices in DC)



Current Procedures

2. When the “pre-Act exemption” is being utilized, you do not need to meet Antique exemption, the CITES permit then is not required to show genus and **species** (for example, use of Elephantidae SP for elephant ivory). This avoids the burden of having to providing definitive species identification.

Management in DC advised that our CF-3177 declaration must be species-level specific for elephant ivory.



Links

<http://www.fws.gov/endangered/>

<https://www.fws.gov/policy/do210.html>

<http://www.fws.gov/policy/do210A1.pdf>

<http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>



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