

**RULEMAKING PETITION TO PREVENT THE COMMERCIALIZATION OF THREATENED  
AFRICAN ELEPHANTS AND THEIR PARTS**



**Petitioners:**

Friends of Animals  
Wildlife Law Program  
7500 East Arapahoe Road, Suite 385  
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720-949-7791

**NOTICE OF PETITION FOR RULEMAKING**

December 19, 2018

*Via Certified Mail (with Literature Cited)*

Ryan Zinke  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Jim Kurth  
Acting Director  
U.S. Fish & Wildlife Service  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Dear Secretary Zinke and Director Kurth:

Friends of Animals submit this rulemaking petition, pursuant to section 553(e) of the Administrative Procedure Act (APA).<sup>1</sup> Petitioner is an “interested person” under APA section 553(e), and seek amendment of certain rules to establish regulatory protocol to govern future importation of elephant skins and parts and to ensure that rules governing the importation of elephants are consistent with conservation efforts and policies of the United States.

### **PROPOSED RULE**

Petitioner requests that the United States Fish and Wildlife Service (hereinafter, “FWS” or “Service”) amend existing regulations governing the importation of African Elephants parts and products. 50 C.F.R. § 17.40(e). Under this rule 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 C.F.R. § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met.

For reasons stated in the attached rulemaking petition, these existing regulations place wild African populations at risk, and subject them to possible extinction throughout all or a significant portion of their range. We have seen dramatic increases in the lawful and unlawful killing of elephants for purposes of taking their skins for commercial uses. There

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<sup>1</sup> The APA provides that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e).

is a growing demand both in the United States and elsewhere for elephant skin boots, wallets, belts, suitcases, jackets, golf bags, pool cues, furniture, car and motorcycle seats, gun holsters, and jewelry, among other products. This risk associated with the commercialization of elephant skins was not previously considered by FWS during previous rulemakings.

Specifically, Petitioner seeks issuance of the following rule:

50 C.F.R. § 17.40(e)

***(2) Live animals and parts and products other than ivory and sport-hunted trophies.*** Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may not be imported into or exported from the United States. Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies imported into the United States prior to enactment of this regulation may not be 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.

These rules are further supported in the attached Basis of Support.

#### **STATEMENT OF PETITIONER'S INTERESTS**

Friends of Animals is an international animal rights organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals activities include educating its members on current threats to many species' abilities to live in ecosystems free from human manipulation, exploitation, and abuse; and monitoring federal agency actions to ensure that laws enacted to protect the environment and wildlife are properly implemented.

Friends of Animals thanks you for the review of this petition and requests a written response informing us of your decision regarding this rulemaking petition.

Respectfully submitted,

Michael R. Harris  
Director  
Friends of Animals, Wildlife Law Program

Western Region Office  
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720-949-7791

On behalf of:

Priscilla Feral, President  
Friends of Animals

**BASIS OF SUPPORT FOR ADOPTION OF PROPOSED RULE TO PREVENT THE  
COMMERCIALIZATION OF THREATENED AFRICAN ELEPHANTS AND THEIR PARTS**

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## INTRODUCTION

Elephants are iconic and charismatic animals known for their massive size and intellect. They have also been subject to devastating poaching throughout their existence. Many countries, including the United States, have placed restrictions on the import and export of ivory to help fight against the illegal poaching of these iconic animals. However, despite nearly world-wide regulations on the trade of ivory, a new threat to elephants is burgeoning. For some time now, the trade in elephant skin has decimated populations of the endangered Asian Elephant, as poachers are no longer just killing the elephants for their tusks, but now killing indiscriminately, targeting females and calves, which are needed to repopulate the species.

Now African Elephants are also increasing being targeted. In 2016, the United States imported 2,079 whole African Elephant skins, up from 275 just two years earlier.<sup>2</sup> The reported value of elephant parts and products imported into the United States increased dramatically from \$24,947 in 2014 to \$4,548,375 in 2017.<sup>3</sup> By providing regulatory mechanisms and restrictions on this growing legal market for elephant parts and products, the United States will protect this threatened species.

The proposed rule is justified based on the failure of the existing regulatory framework to protect elephants as mandated by the Endangered Species Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

## LEGAL BACKGROUND

### A. The Convention on International Trade of Endangered Species.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or “Convention”) is the only multilateral treaty aimed at protecting plants and animals that face threats from international trade. The Convention is legally binding on all countries that choose to join. Participating governments are referred to as Parties. Parties must implement the Convention into their own national laws and take appropriate measures to enforce the Convention. There are currently 180 Parties to CITES, including the United States.

International trade in wildlife is regulated under CITES by the listing of species in one of three Appendices. The Convention lists, under Appendix I, the most endangered species, those that are currently threatened with extinction and which are or may be affected by

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<sup>2</sup> *Elephant Skin Auctions in Zimbabwe Are Booming—And Legal*, NATIONAL GEOGRAPHIC, <https://news.nationalgeographic.com/2017/12/wildlife-watch-zimbabwe-elephant-skins-trade/> (last visited July 17, 2018)

<sup>3</sup> This information is derived from the United States Fish and Wildlife Service’s response to Friends of Animals Freedom of Information Act Request for information relating to the import of African elephant hides, skins, or products from 2012 to May 9, 2018.

trade. CITES, Art. II, ¶1. The Convention mandates particularly strict regulations for trade of Appendix I species, and limits trades in such species to exceptional circumstances. *Id.* In these exceptional cases, trade may take place provided it is authorized by the granting of both an import permit and an export permit after the Parties have verified that certain conditions are met. CITES, Art. III.

The Convention lists species that are not necessarily threatened with extinction now, but that may become so unless trade is closely controlled in Appendix II. CITES, Art. II, ¶2. International trade in specimens of Appendix II species may be authorized by the granting of an export permit or re-export certificate. CITES, Art. IV. No import permit is necessary under CITES for Appendix II species (although a permit is needed in some countries that have taken stricter measures than CITES requires). Permits or certificates should only be granted if the relevant authorities are satisfied that certain conditions are met, and above all that trade will not be detrimental to the survival of the species in the wild. CITES, Art. IV.

The Convention lists species included at the request of a Party that already regulates trade in such species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation, under Appendix III. CITES, Art. II, ¶3. International trade in specimens of species listed on Appendix III is allowed only on presentation of the appropriate permits or certificates. CITES, Art. V.

The United States has been a Party to the Convention since it went into force in 1975 and has agreed to enforce CITES and prohibit violations of its provisions. 27 U.S.T. 1087 (Mar. 3, 1973). The United States implements provisions of CITES through the Endangered Species Act, which prohibits trade in any specimens contrary to the provisions of the Convention. 16 U.S.C. § 1538(c)(1).

## **B. Endangered Species Act.**

Congress enacted the ESA in 1973 in response to growing concern over the extinction of animal and plant species. The text of the Act as well as its legislative history unequivocally demonstrate that Congress intended that protection of endangered species be afforded the highest level of importance. Congress concluded that threatened and endangered species “are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). Accordingly, Congress passed the ESA “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of [certain enumerated] treaties and conventions” signed by the United States. 16 U.S.C. § 1531(b). The Supreme Court recognizes that by enacting the ESA, Congress “intended endangered species to be afforded the highest priorities.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978).

The fundamental method by which the ESA protects threatened and endangered species is its aggressive restrictions on take of listed species, and the prohibition on the importation of listed species into the United States. The ESA prohibits the import or export, as well as the possession, sale, and receipt of any endangered animals. 16 U.S.C. §1538(a)(1)(A)-(B). Federal regulations also extend this prohibition to any species that are listed under CITES. 50 C.F.R. § 23.13. In limited circumstances, applicants can seek a permit to engage in these activities. 16 U.S.C. §§ 1538 (d), 1539; 50 C.F.R. § 23.20.

### **C. The Special 4(d) Rule for African Elephants.**

Whenever a species is listed as a threatened species pursuant to 16 U.S.C. § 1333(c), FWS is required to issue regulations to provide for the conservation of such species. 16 U.S.C. § 1333(d). In 1978, the Service listed African elephants as a threatened species under the ESA and simultaneously issued a special rule for them. Listing of the African Elephant as a Threatened Species, 43 Fed. Reg. 20499 (May 12, 1978); 50 C.F.R. § 17.11(h); 50 C.F.R. § 17.40(e) (“Special Rule”). The Special Rule “applies to any specimen of the species *Loxodonta africana* whether live or dead, including any part or product thereof.” 50 C.F.R. § 17.40(e). In its current form, the Special Rule provides, in part:

Live animals and parts and products other than ivory and sport-hunted trophies. 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 § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met.

50 C.F.R. § 17.40(e)(2).

## **FACTUAL BACKGROUND**

### **A. African Elephant Conservation Status.**

African elephants (*Loxodonta africana*) are listed under both the ESA and CITES. Recognizing the long history of human exploitation and declining population, FWS listed the African elephant as Threatened under the ESA in 1978. 43 Fed. Reg. 20499. FWS noted that the African elephant “is among the world’s most commercially valuable animals.” 43 Fed. Reg. at 20503. At the time, FWS estimated a population of at least 1.3 million animals. 43 Fed. Reg. at 20500. Elephant populations throughout Africa continue to decline throughout the continent. On March 16, 2016, FWS determined that petitions presented substantial information that may warrant reclassifying the status of African elephants from threatened to endangered. *See* 90-Day Findings on 29 Petitions, 81 Fed. Reg. 14058 (March 16, 2016). At present, FWS has not yet completed a status review or issued a 12-month finding on the petitions.

At the first meeting of the Conference of the Parties, African elephants were listed in Appendix II of CITES. However, the elephant population continued to decline. In 1990, following a decade in which African elephant populations declined nearly fifty percent, the parties moved the species to Appendix I.<sup>4</sup> In 1997, the parties agreed to allow the transfer to Appendix II of the elephant populations in Botswana, Namibia, and Zimbabwe, and a subsequent auction of raw ivory to buyers from Japan.<sup>5</sup> In 2000, the elephant population of South Africa was also transferred to Appendix II, but there was no agreement for further ivory trade.<sup>6</sup> Since the parties transferred some populations to Appendix II, poaching and the illegal trade of ivory continue to increase.

African elephants are the largest land animals on Earth. Elephants eat roots, grasses, fruit, and bark, and they eat a lot of these foods. An adult elephant can consume up to 300 pounds (136 kilograms) of food in a single day. African elephants roam over great distances daily. In the wild, an elephant's home range is as much as 500 square miles.

Female elephants (cows) live in family herds with their young, but adult males (bulls) tend to roam on their own or associate with elder bulls. National Geographic has described having a baby elephant as “a serious commitment.”<sup>7</sup> Elephants have a longer pregnancy than any other mammal—almost 22 months. Cows usually give birth to one calf every two to four years. At birth, elephants already weigh some 200 pounds (91 kilograms) and stand about 3 feet (1 meter) tall.

African elephant range throughout sub-Saharan Africa and the rain forests of central and West Africa. The continent's northernmost elephants are found in Mali's Sahel desert. The small, nomadic herd of Mali elephants migrates in a circular route through the desert in search of water. African elephants are found in Eastern, Southern, Central, and West Africa.

Preliminary genetic evidence suggests that there may be at least two species of African elephants, namely the Savanna Elephant (*Loxodonta africana*) and the Forest Elephant (*Loxodonta cyclotis*). Some experts have also postulated a third species, the West African Elephant. The African Elephant Specialist Group, formed by the International Union for Conservation of Nature (IUCN), believes that more extensive research is required to support the proposed re-classification. The concern is that premature allocation into more than one species may leave hybrids in an uncertain conservation status. For this reason, in

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<sup>4</sup> Smithsonian National Zoological Park, African Elephant

<http://nationalzoo.si.edu/Animals/AfricanSavanna/fact-afelephant.cfm>

<sup>5</sup> Convention on International Trade of Endangered Species of Wild Flora and Fauna, (Signed Mar. 3, 1973) 27 U.S.T. 1087.

<sup>6</sup> Species Survival Network, African Elephant, [www.speciessurvivalnetwork.org](http://www.speciessurvivalnetwork.org).

<sup>7</sup> *African Elephant*, NATIONAL GEOGRAPHIC,

<http://www.nationalgeographic.com/animals/mammals/a/african-elephant/> (last visited December 19, 2018).

assessing the status of the African elephants in the wild, IUCN treats all wild populations as a single species.

## **B. Asian Elephant Poaching Crisis.**

An alarming increase in poaching of Asian elephants is being documented. Poaching of Asian elephants for ivory has been a major threat to the specie. Notably, because only 25 to 30 percent of male Asian elephants have tusks (percentages vary by region) and no females have them, ivory poachers have spared breeding females and calves.<sup>8</sup> However, poaching for skins targets elephants indiscriminately, targeting tuskless males, female breeders, and calves. Considering the low reproductive rate, long gestation period, and long inter-calving period of elephants, the targeting of critical female breeders may have devastating consequences for the survival of Asian elephant populations.<sup>9</sup>

Over 40 poached elephants were found between 2015 and 2017 in Myanmar, most of which had been butchered for their skin and meat.<sup>10</sup> In the Bago Yama region, five collared males were poached, only one with tusks.<sup>11</sup> The meat and skins are moved quickly into China, indicating organized trafficking networks and criminal groups.<sup>12</sup> The dynamics of elephant poaching and illegal trafficking appear to have shifted from ivory and live animals to the skin and meat trade, which is spreading across the region with reports also from Northern India and Thailand.<sup>13</sup>

The shifting of international trafficking and criminal networks from ivory to elephant parts is a burgeoning crisis that comes on the heels of international restrictions on import, export, and sale of ivory. Most notably, China shutting down its legal trade in ivory cuts off means for poachers to slip its illegal ivory into a legal market.<sup>14</sup> Poachers are now shifting their focus to skins and meat.

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<sup>8</sup> *In a Horrifying New Twist, Myanmar Elephants Are Being Poached For Their Skin*, SMITHSONIAN MAGAZINE, <http://www.smithsonianmag.com/science-nature/myanmar-elephants-are-being-poached-their-skin-not-tusks-180968535/#TyihjUhakKiC970b.99> (last visited December 19, 2018).

<sup>9</sup> Sampson C, McEvoy J, Oo ZM, Chit AM, Chan AN, Tonkyn D, et al. (2018) *New elephant crisis in Asia—Early warning signs from Myanmar*. PLoS ONE 13(3): e0194113. <https://doi.org/10.1371/journal.pone.0194113> (last visited December 19, 2018).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *China Shuts Down Its Legal Ivory Trade*, NATIONAL GEOGRAPHIC, <https://news.nationalgeographic.com/2017/12/wildlife-watch-china-ivory-ban-goes-into-effect/> (last visited December 19, 2018).

### C. African Elephant Skins and Parts Market.

The market for African elephant skin has grown over the past decade. In 2007-2016, according to CITES data, Zimbabwe and South Africa together exported the whole hides of 38,858 elephants plus another 609,000 square feet and 21,504 pounds of skins and leatherwork.<sup>15</sup> At an average 20 square feet per processed hide, these would represent more than 30,000 elephants.<sup>16</sup>

The United States import of elephant skins and parts other than ivory has also been increasing dramatically. U.S. elephant skin imports from Zimbabwe and South Africa increased from 275 whole skins in 2014 to 2,079 in 2016, plus thousands of smaller skin pieces and finished leather goods from various countries.<sup>17</sup> Between 2012 and mid-2018, importers reported importing at least \$7,201,190 worth of elephant parts and products into the United States.<sup>18</sup> The reported value of elephant parts and products imported into the United States increased dramatically from \$24,947 in 2014 to \$4,548,375 in 2017.<sup>19</sup>

Unlike the Asian elephant, all African elephants have the potential for tusks. However, an increasing number of African elephants are now born tuskless because poachers have consistently targeted animals with the best ivory over decades, fundamentally altering the gene pool.<sup>20</sup> In some areas 98% of female elephants now have no tusks, researchers have said, compared to between two and six percent born tuskless on average in the past.<sup>21</sup>

In South Africa's Addo National Elephant Park, for example, 90-95% of female elephants are now tuskless.<sup>22</sup> The population there has also been improving, as the park's conservation manager states, "Addo's elephants might be the biggest success story

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<sup>15</sup> *Elephant Skin Auctions in Zimbabwe Are Booming—And Legal*, NATIONAL GEOGRAPHIC, <https://news.nationalgeographic.com/2017/12/wildlife-watch-zimbabwe-elephant-skins-trade/> (last visited December 19, 2018)

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Again, this information is derived from the United States Fish and Wildlife Service's response to Friends of Animals Freedom of Information Act Request for information relating to the import of African elephant hides, skins, or products from 2012 to May 9, 2018.

<sup>19</sup> *Id.*

<sup>20</sup> *African elephants are being born without tusks due to poaching, researchers say*, INDEPENDENT, <https://www.independent.co.uk/news/elephants-africa-tusks-ivory-poaching-born-without-a7440706.html>. (last visited July 17, 2018).

<sup>21</sup> *Id.*

<sup>22</sup> *Where Female Elephants Without Tusks Roam — and Poachers Stay Away*, NEW YORK TIMES, <https://www.nytimes.com/2018/06/16/world/africa/south-africa-elephants-tusks.html> (last visited December 19, 2018).

anywhere.”<sup>23</sup> The lack of tusks is one of the reasons why poachers avoid Addo. However, now the park’s conservation manager is identifying a new concern for Addo’s elephants: poaching for hides.<sup>24</sup> Addo’s tuskless female elephants are now at risk of poaching once again because of the booming market for elephant skins. As the ivory trade continues to be regulated, restricted, and abolished worldwide, elephant poachers in Africa are following the same path taken by elephant poachers in Asia, shifting their focus to hides and other elephant parts to earn an income. Some investigators have argued that elephant poachers are deliberately creating a market for elephant skins to replace the ivory trade.<sup>25</sup>

The United States imported 2,079 elephant skins in 2016, up from 275 just two years earlier. Meanwhile, the United States was having public displays of crushing ivory. In 2014, New York crushed more than a ton of ivory in Times Square and, in 2017, crushed \$8 million dollars worth of ivory in Central Park.<sup>26</sup> The United States’s commitment to protect African elephants by destroying the market for ivory is commendable. However, by continuing to allow trade in skins and other elephant parts, the message is less impactful, as the US is still supporting the trade and killing of elephants for fashion accessories and status symbols (boots, wallets, belts, etc).<sup>27</sup> This contradictory stance undermines conservation efforts because of the broader impact on public perception. The United States continues to be a major importer of elephant parts and products in addition to trophies and ivory. Between 2003 and 2012, the United States imported small leather products (57,844 specimens), ivory carvings (56,204 specimens), and skins (33,184 specimens). Imports of these parts and products over the period studied far exceed those of other countries (approximate 44% of global total).<sup>28</sup> Further, the number of African Elephant skins

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *The scourge of the skin poachers: Hideous sight of a butchered elephant exposes the sick trade in animals' hides to feed soaring demand in China*, DAILY MAIL, <http://www.dailymail.co.uk/news/article-3805873/The-scurge-skin-poachers-Hideous-sight-butchered-elephant-exposes-sick-trade-animals-hides-feed-soaring-demand-China.html> (last visited December 19, 2018)

<sup>26</sup> *U.S. crushes more than a ton of ivory in Times Square*, CNN, <https://www.cnn.com/2015/06/20/us/times-square-ivory-crush/index.html> (last visited December 19, 2018); *About \$8 Million of Elephant Ivory Destroyed in Central Park*, NEW YORK TIMES, <https://www.nytimes.com/2017/08/03/nyregion/about-8-million-of-ivory-destroyed-in-central-park.html>; (last visited December 19, 2018).

<sup>27</sup> *Would you pay £20,000 for trainers made from python? Jay Z and LeBron James among stars with pair of customised shoes made from skin of nine different animals*, DAILY MAIL, <http://www.dailymail.co.uk/news/article-3560623/Would-pay-20-000-trainers-python-Jay-Z-Lebron-James-stars-pair-customised-shoes-skin-nine-different-animals.html> (last visited December 19, 2018)

<sup>28</sup> *Ivory Might be On the Way Out ... But Elephant Leather Sales Are on the Rise*, ONE GREEN PLANET, <https://www.onegreenplanet.org/animalsandnature/elephant-leather-sales-on-the-rise/> (last visited December 19, 2018)

imported to the United States is dramatically increasing (from an average of 797 per year to an average of 2,123 per year in recent years).<sup>29</sup>

The burgeoning market for leather poses serious risks to African elephants as poachers continue to lose income from bans on ivory. As they have in Asia, elephant poachers in Africa have started killing elephants for their skins and other parts/products. In order to protect the African Elephant, the United States needs to be on the forefront of conservation efforts and restrict the import and trade in all elephant parts, including skins, hides, and other pieces.

### PETITION FOR RULEMAKING

Petitioner seeks issuance of the following rule:

50 C.F.R. § 17.40(e)

**(2) *Live animals and parts and products other than ivory and sport-hunted trophies.*** Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may not be imported into or exported from the United States. Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies imported into the United States prior to enactment of this regulation may not be 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.

### CONCLUSION

For reasons stated above, existing regulations for African elephants fail to take into account the increasing pressure on these animals by poachers seeking their skins and other parts. This in turn places wild African elephant populations at risk, and subjects them to possible extinction throughout all or a significant portion of their range. We have seen dramatic increases in the lawful and unlawful killing of elephants for purposes of taking their skins for commercial uses. There is a growing demand both in the United States and elsewhere for elephant skin boots, wallets, belts, suitcases, jackets, golf bags, pool cues, furniture, car and motorcycle seats, gun holsters, and jewelry, among other products. This risk associated with the commercialization of elephant skins was not previously considered by FWS during previous rulemakings. We ask that FWS do so now and adopt our proposed revision to 50 C.F.R. § 17.40(e).

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<sup>29</sup> *Id.*