

**PETITION TO THE SECRETARY OF THE INTERIOR
TO LIST THE AFRICAN ELEPHANT (*Loxodonta africana*)
AS ENDANGERED PURSUANT TO THE
ENDANGERED SPECIES ACT**

February 11, 2015

The International Fund for Animal Welfare,
Humane Society International,
The Humane Society of the United States, and
The Fund for Animals

EXECUTIVE SUMMARY

This Petition demonstrates that the African elephant (*Loxodonta africana*) meets the statutory criteria for an Endangered listing under the Endangered Species Act (ESA).

The petitioners – The Humane Society of the United States, Humane Society International, The International Fund for Animal Welfare, and The Fund for Animals – submit this Petition to the Secretary of the Interior and the U.S. Fish and Wildlife Service requesting reclassification of the African elephant from Threatened to Endangered under the ESA. The ESA requires listing a species as “Endangered” when it “is in danger of extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). As demonstrated herein, both of the two known subspecies of African elephant, the savanna elephant (*Loxodonta africana africana*) and the forest elephant (*Loxodonta africana cyclotis*), are facing catastrophic population declines, and elephants meet the definition of Endangered across their African range.

The Act requires the Secretary to determine within 90 days of receiving a petition whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A). Such determination must be made solely on the basis of the “best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A). Following a positive 90-day finding, the Secretary must, within one year of receipt of the Petition, complete a review of the status of the species, publish a finding of whether the action is warranted and, if so, promptly propose a rule to change the listing status. 16 U.S.C. § 1533(b)(3)(B). Should a rule be proposed, the Secretary has an additional year to finalize regulations protecting the species. 16 U.S.C. §1533(b)(6)(A).

Once a foreign species is listed as Endangered, protection under the ESA occurs by, *inter alia*, prohibiting import, export, and interstate commerce in live animals and parts derived from wild populations, unless such activity enhances the propagation or survival of the species or is for conservation science purposes. 16 U.S.C. § 1533(b)(1)(A). Furthermore, Section 8 of the ESA provides for “International Cooperation” in the conservation of foreign species, and listing a foreign species heightens global awareness about the importance of conserving the species.

This Petition describes the natural history and biology of the African elephant and the current

status and distribution of the subspecies. The Petition evaluates the threats to the continued existence of the African elephant and shows that the species' population size is in alarming and precipitous decline due to rampant poaching, severe habitat loss, and commercial overutilization. The Petition also demonstrates how Americans engaging in unsustainable international trade of African elephants and their parts are negatively impacting the conservation status of the species. Existing laws and regulations are inadequate to address the numerous and interacting threats to the African elephant and listing the African elephant as Endangered is necessary to promote the conservation of the species, as required by law.

Status and Distribution

For over 30 years, the U.S. Fish & Wildlife Service (USFWS) has recognized that the African elephant (*Loxodonta africana*) is threatened with extinction.¹ The International Union for the Conservation of Nature (IUCN) also lists the species as Vulnerable² on its Red List of Threatened Species because it is considered to have a high risk of extinction in the wild (2008).³

In 1978, the USFWS found “at least 1.3 million” African elephants were “still in existence”.⁴ Using the best estimate of elephant numbers from systematic surveys⁵ there were likely 523,872 elephants in Africa in 2012.⁶ Thus, the best available science shows that the African elephant has suffered a population-wide decline of roughly 60% since the Service listed the African elephant as Threatened in 1978. This sharp decline is a result of habitat loss, poaching, commercial exploitation, trophy hunting, human-elephant conflict, regional conflict and instability, and climate change, which all presently combine to put the species in danger of extinction.⁷ Indeed, the Secretariat for the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES) states that “poaching numbers in Africa remain at levels that are unsustainable, with mortality exceeding the natural birth rate, resulting in an ongoing decline in African elephant numbers.”⁸

¹ 50 C.F.R. § 17.11; 43 Fed. Reg. 20499 (May 12, 1978).

² J. J. Blanc, 2008. *Loxodonta africana*. [hereinafter “Blanc, *Loxodonta africana*”]; *The IUCN Red List of Threatened Species. Version 2014.2*. (2008), www.iucnredlist.org [hereinafter “IUCN Red List 2014”].

³ IUCN, *1994 Categories and Criteria (version 2.3). IUCN Red List of Threatened Species*. (1994), <http://www.iucnredlist.org/technical-documents/categories-and-criteria/1994-categories-criteria> [hereinafter “IUCN Red List 2.3”].

⁴ 43 Fed. Reg. at 20500.

⁵ J. J. Blanc, et al., *African Elephant Status Report 2002: An Update from the African Elephant Database (IUCN/SSC African Elephant Specialist Grp. 2003)*, http://www.iucn.org/about/work/programmes/species/who_we_are/ssc_specialist_groups_and_red_list_authorities_directory/mammals/african_elephant/data/reports/?uPubsID=2749 [hereinafter “African Elephant Status Report 2002”].

⁶ IUCN, *Elephant Database, 2012 Continental Totals* (2012), http://www.elephantdatabase.org/preview_report/2013_africa/Loxodonta_africana/2012/Africa [hereinafter “IUCN, *Elephant Database*”].

⁷ UNEP et al., *A Rapid Response Assessment: Elephants in the Dust, the African Elephant Crisis*. United Nations Environment Program. (2013), http://www.cites.org/common/resources/pub/Elephants_in_the_dust.pdf [hereinafter “UNEP et al., *A Rapid Response*”].

⁸ CITES, *Elephant Conservation, Illegal Killing, and Ivory Trade*. (2014). 10. Available at http://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-42-01_2.pdf [hereinafter “CITES, *Elephant Conservation*”].

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

In addition to the African elephant's precipitous population decline, the species' range has contracted significantly as well. In 1979, the African elephant's range spanned 7.3 million km² (Figure 1).⁹ As of 2007, African elephants inhabited only 3.3 million km² (Figure 2).¹⁰ This is a 54.8% range reduction over 28 years, and is attributable to factors such as increased human population density and industrial and agricultural development.¹¹

As the human population continues to expand throughout the range of the African elephants, habitat loss and degradation are expected to continue to be a major threat to the survival of elephants. Expansive habitat is a prerequisite for healthy elephant populations, given their nature as a migratory animal and the heavy impacts they will cause on a landscape if a population is concentrated in one place for too long.

As African countries continue to modernize, "habitat encroachment, increased human population densities, urban expansion, agricultural development, deforestation and infrastructure development"¹² will likely continue to escalate and impact the long-term prognosis for the species. Already, this process of development has impacted nearly a third of existing elephant range, a figure that could double by 2050.¹³ The issue of habitat loss is not merely one of temporary displacement of elephants by humans: land use patterns, such as the transformation of woodland or savanna to agricultural land, can have a major long-term impact on resident elephants.¹⁴ Other threats to habitat and range for African elephants include human-elephant conflict, the effects of war and civil conflict, and climate change and desertification.

Overutilization for Commercial, Recreational, or Scientific Purposes

Analysis of trade in African elephants and their parts clearly shows that the species is overutilized. While international trade that is currently legal can be monitored via the CITES trade database, illegal trade is more difficult to precisely quantify. But there is a clear link between legal trade and illegal trade, and increased oversight of the international and domestic trade in ivory and other elephant parts and products is needed to bring the African elephant back

⁹ I. Douglas-Hamilton. 1979. African elephant ivory trade- Final report to the U.S. Fish and Wildlife Service. Typescript. As cited in CITES Doc. 7.43, Annex 2, the United Republic of Tanzania Proposal to Amendments to Appendices I and II, 1989 [hereinafter "Douglas-Hamilton, *Final Report*"]; See also Peter Jackson, *The Future of Elephants and Rhinos in Africa*. 11 *Ambio* 202-205 (2003).

¹⁰ J. J. Blanc, et al., No. 33, African Elephant Status Report 2007: An Update from the African Elephant Database. Occasional Paper Series of the IUCN Species Survival Commission (IUCN/SSC African Elephant Specialist Grp. 2007), http://www.iucn.org/about/work/programmes/species/who_we_are/ssc_specialist_groups_and_red_list_authorities_directory/mammals/african_elephant/data/reports/?uPubsID=3407 [hereinafter "African Elephant Status Report 2007"].

¹¹ UNEP et al., *A Rapid Response*.

¹² African Elephant Status Report 2007; see also African Elephant Status Report 2002.

¹³ UNEP et al., *A Rapid Response* at 7.

¹⁴ R. E. Hoare & J. T. Du Toit, *Coexistence Between People and Elephants in African Savannas*, 13 *Conservation Biology* 633-639 (1999), http://www.researchgate.net/publication/227623128_Coexistence_between_People_and_Elephants_in_African_Savannas [hereinafter "Hoare & Du Toit, *Coexistence Between People and Elephants*"].

from the brink of extinction.

Original analysis¹⁵ presented in this Petition shows that between 2003 and 2012, net imports from all sources and for all legal purposes represented approximately 49,501 African elephants in international trade.¹⁶ Net U.S. imports from all sources and for all legal purposes represented approximately 8,119 African elephants in international trade. The CITES decisions to approve sales of stockpiled ivory from Botswana, Namibia, Zimbabwe, and South Africa to Asian markets¹⁷ stimulated international demand for elephant parts and creates confusion amongst consumers about the legal status of the elephant products in trade.¹⁸ For example, after the 2008 sale, there was immediately an unprecedented spike in imports of ivory, and net imports of African elephant specimens have grown substantially since then.

Remarkably, the U.S. is one of the leading importers of African elephant specimens—predominantly for commercial, personal and hunting trophy purposes. Further, federal law enforcement officials routinely seize shipments of ivory directly from Africa, proving that the U.S. is an end market for illegal ivory products.¹⁹ The U.S. plays a significant role in the overutilization of the species – large amounts of ivory are offered for sale on the domestic market that appear to have been carved after the 1989 CITES Appendix I listing, implying that they were illegally imported.²⁰

The African elephant is in danger of extinction due to this overutilization for commercial and recreational purposes, and elephant poaching to supply this demand has reached a level that is not biologically sustainable.²¹

Inadequacy of Existing Regulatory Mechanisms

The African elephant is the subject of a large and varied body of law—including local, national, and international laws—much of which is designed to protect the species through mechanisms such as trade controls and direct prohibitions on take. Collectively, these laws and regulations have failed to prevent the drastic population loss and range declines the species is currently facing.

¹⁵ The analysis consists of data compiled from the CITES Trade Database in October 2014, *available at* <http://trade.cites.org/>. CITES, *CITES Trade Database*, 2013 (2013), <http://trade.cites.org/>. (last visited Feb. 9, 2015).

¹⁶ Note that there is a one-to-one ratio between trophy imports, body imports, and live imports and the number of elephants.

¹⁷ CITES, *Illegal ivory trade driven by unregulated domestic markets*, 4 Oct. 2002, *available at* http://www.cites.org/eng/news/pr/2002/021004_ivory.shtml (last visited Feb 9, 2015) [hereinafter “CITES, *Illegal ivory trade*”].

¹⁸ CITES, *Ivory Auctions Raise 15 Million U.S.D. for Elephant Conservation*, *available at* http://www.cites.org/eng/news/pr/2008/081107_ivory.shtml (last visited Feb. 9, 2015) [hereinafter “CITES, *Ivory Auctions Raise 15 Million U.S.D.*”].

¹⁹ Beth Allgood, et al., *U.S. Ivory Trade: Can a Crackdown on Trafficking Save the Last Titan?*, 20 *Animal L.* 27, 36 (2013) [hereinafter “Allgood et al., *U.S. Ivory Trade*”].

²⁰ D. Stiles & E. Martin, *The U.S.A.’s Ivory Markets—How Much a Threat to Elephants?*, 45 *Pachyderm* 67 (July 2008–June 2009), *available at* www.pachydermjournal.org/index.php/pachy/article/view/13/52 [hereinafter “Stiles & Martin, *U.S.A.’s Ivory Markets*”].

²¹ CITES, *Elephant Conservation, Illegal Killing, and Ivory Trade*. (2014). 10. *Available at* http://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-42-01_2.pdf.

For example, CITES suffers from inconsistent implementation and enforcement, with politics influencing Appendix listing decisions, and compliance failures. Additionally, CITES is not designed to control domestic markets, nor does it address non-trade related threats such as habitat loss. The Parties to CITES have also, on two separate occasions, undermined elephant conservation by sanctioning ivory stockpile sales. Other conventions such as the Convention on Migratory Species, regional efforts like the African Union and the Lusaka Agreement, as well as national laws in range, transit and consumer states, have all failed to protect the elephant from its current decline.

The U.S.—a significant ivory consumer country—only lists the species as Threatened under the ESA, with a “special rule” that allows significant trade in the species to continue without sufficient oversight of interstate and foreign commerce in ivory, hunting trophies, and other products. 50 C.F.R. § 17.40(e). The African Elephant Conservation Act (AfECA) created U.S.-sponsored conservation programs and additional international trade restrictions on ivory, and the Lacey Act criminalizes commercial activity in wildlife products illegally obtained, but neither of these two laws has the ability to meaningfully address the U.S. role in the current poaching crisis, as would an Endangered uplisting for the species.

The Service recognized over a year ago that additional ESA regulation is needed to promote African elephant conservation and to meet the goals of the National Strategy for Combating Wildlife Trafficking (and issued Director’s Order 210 to clarify implementation of existing law). But to date no such amendment for the African elephant ESA regulations has been formally proposed, and neither a change to the existing African elephant special rule (nor the recent changes to the U.S. CITES regulations) would be as beneficial to the species as a change in the listing status, from Threatened to Endangered.

Conclusion

This Petition demonstrates that the African elephant meets the criteria for listing as Endangered under the ESA and therefore the species must be uplisted. The best scientific and commercial data available demonstrate that the population and range of the African elephant have significantly decreased, and continue to decrease, and that the African elephant is in danger of extinction throughout “all or a significant portion of its range” based on the statutory listing factors. 16 U.S.C. §§ 1532(6), 1533(a).

The African elephant faces serious threats due to rampant poaching, loss of habitat, exploitation, retaliatory killings linked to human-elephant conflict, the effects of war and civil conflict, and climate change. Legal trade in African elephant products has stimulated demand for ivory that cannot be completely met by legal trade, subsequently driving the catastrophic increase in poaching. The species is not adequately protected by existing regulatory measures at national, regional or international levels. Listing the African elephant as Endangered under the ESA would be a meaningful step toward reversing the decline of the species by ensuring that the U.S. does not allow the importation of or interstate commerce in African elephants or their parts unless doing promotes the conservation of the species, and by raising global awareness about the alarming and increasingly precarious status of this iconic species.